

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

PLAINTIFF,

VS.

ASHVIN DESAI,

DEFENDANT.

CASE NO. CR-11-846-EJD

SAN JOSE, CALIFORNIA

SEPTEMBER 20, 2013

VOLUME 9

PAGES 1395 - 1584

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFF: U.S. DEPARTMENT OF JUSTICE
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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE L. RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,
TRANSCRIPT PRODUCED WITH COMPUTER.

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A P P E A R A N C E S: (CONT'D)

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ANKIL LALU

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1 SAN JOSE, CALIFORNIA

SEPTEMBER 20, 2013

2 P R O C E E D I N G S

3 (JURY OUT AT 10:32 A.M.)

4 THE COURT: ALL RIGHT. LET'S JUST GO ON THE RECORD
5 IN THE DESAI MATTER. ALL COUNSEL AND THE DEFENDANT ARE
6 PRESENT. THE JURY IS NOT PRESENT. THE WITNESS IS NOT PRESENT.

7 AND WE'RE HAVING A DISCUSSION OUTSIDE OF THE PRESENCE OF
8 THE JURY FOR A COUPLE OF ISSUES. THE FIRST IS THE REDACTION OF
9 THE EXHIBITS THAT WE DISCUSSED YESTERDAY. I THINK THOSE
10 WERE --

11 MS. SISKIND: -- 143 TO 153, YOUR HONOR.

12 THE COURT: THANK YOU.

13 MS. SISKIND: WE MADE THE REDACTIONS LAST NIGHT, AND
14 THERE WAS ONE MISTAKE I JUST CAUGHT. THERE IS ONE LINE OF TEXT
15 THAT DID NOT GET CAPTURED IN THE REDACTION. MS. LANE IS MAKING
16 THAT RIGHT NOW. AND OTHERWISE THE REDACTIONS ARE MADE.

17 WE GAVE COPIES TO THE DEFENSE THIS MORNING TO REVIEW TO
18 SEE IF IT'S SATISFACTORY TO THEM.

19 THE COURT: LET ME ASK THE DEFENSE, YOU HAVE REVIEW
20 THE REDACTED VERSION?

21 MR. SCHAINBAUM: I HAVE GENERALLY REVIEWED IT. I
22 RESERVE THE RIGHT, AS SPECIFIC DOCUMENTS ARE BEING INTRODUCED,
23 TO SEE IF THEY CONFORM TO WHAT WE AGREED UPON YESTERDAY.

24 SO I CAN'T REPRESENT TO THE COURT THAT I HAVE LOOKED AT
25 EVERY PARTICULAR DOCUMENT ON EVERY PAGE, BUT I HAVE GENERALLY

1 LOOKED AT THE DOCUMENTS, AND I'LL TAKE THE GOVERNMENT'S
2 REPRESENTATION THAT THERE WAS ONLY ONE ERROR.

3 BUT OUT OF AN ABUNDANCE OF CAUTION, I RESERVE THE RIGHT,
4 SHOULD ANY PARTICULAR DOCUMENT NOT CONFORM TO WHAT THIS COURT
5 HAS STATED YESTERDAY AND WHAT WE UNDERSTOOD TO BE THE
6 REDACTION, I WILL EITHER CALL FOR A SIDE-BAR OR JUMP UP.

7 THE COURT: ALL RIGHT.

8 MR. SCHAINBAUM: AND I'LL SAY "OBJECTION" AND A
9 SIDE-BAR.

10 MS. SISKIND: AND THERE MAY BE MORE THAT WE MISSED.
11 THAT WAS THE ONE THAT I CAUGHT THIS MORNING.

12 MR. SCHAINBAUM: YES.

13 THE COURT: AND SO ALL PARTIES HAVE THE REDACTIONS.
14 THE WITNESS BINDER CONTAINS THEM NOW.

15 MS. SISKIND: AND THE COURT HAS THEM AS WELL.

16 THE COURT: THANK YOU VERY MUCH.

17 LET'S MOVE TO THE NEXT ISSUE, WHICH IS THE LIMITING
18 INSTRUCTION THAT I INDICATED I THINK WOULD BE APPROPRIATE FOR
19 THE COURT TO PROVIDE TO THE JURY UPON RECEIPT OF THIS
20 INFORMATION.

21 AND DO YOU HAVE A SUGGESTED --

22 MS. SISKIND: WE DO, YOUR HONOR. WE GAVE A COPY --
23 MAY I COME AROUND?

24 THE COURT: YES. THANK YOU. THANK YOU. DO YOU
25 HAVE A COPY OF THIS, MR. SCHAINBAUM?

1 MR. SCHAINBAUM: I DON'T --

2 MS. SISKIND: OH, I THOUGHT YOU WERE HANDED ONE.

3 I'M SORRY. TOO MANY PAPERS. AND WE PATTERN THIS OFF OF THE
4 INSTRUCTIONS, I BELIEVE, EVIDENCE OFFERED FOR A LIMITED
5 PURPOSE.

6 THE COURT: I THINK THAT'S 2.11.

7 MR. SCHAINBAUM: RIGHT.

8 THE COURT: YES, 2.11. IT'S THE NINTH CIRCUIT
9 INSTRUCTION 2.11.

10 (PAUSE IN PROCEEDINGS.)

11 THE COURT: MR. SCHAINBAUM, DO YOU CARE TO COMMENT
12 ON THE PROPOSED 2.11?

13 MR. SCHAINBAUM: WOULD YOU GIVE ME A MINUTE OR TWO,
14 YOUR HONOR?

15 THE COURT: OF COURSE.

16 MR. SCHAINBAUM: THANK YOU, YOUR HONOR.

17 (PAUSE IN PROCEEDINGS.)

18 MR. SCHAINBAUM: YOUR HONOR, I'M GOING TO CONSULT
19 WITH THE DEFENDANT?

20 THE COURT: OF COURSE, YES.

21 MR. SCHAINBAUM: OKAY.

22 (PAUSE IN PROCEEDINGS.)

23 MR. SCHAINBAUM: OKAY, YOUR HONOR, I'M INITIALLY
24 READY.

25 THE COURT: YES, SIR.

1 MR. SCHAINBAUM: I HAVE IN HAND WHAT THE GOVERNMENT
2 PREPARED AS A LIMITING INSTRUCTION, AND I HAVE SOME
3 MODIFICATIONS AND THEY'RE AS FOLLOWS:

4 THE FIRST SENTENCE IS AS THE GOVERNMENT HAS PROPOSED IT,
5 "YOU'RE ABOUT TO HEAR EVIDENCE AND TESTIMONY REGARDING AUDITS
6 THAT THE I.R.S. CONDUCTED OF THE DEFENDANT FOR THE YEARS 2003
7 THROUGH 2008."

8 TO BE ACCURATE, I MODIFIED THE SENTENCE BY ADDING THE
9 WORDS BETWEEN "REGARDING" AND "AUDITS" THE FOLLOWING: "I.R.S.
10 NOTICES REGARDING ONLY CORRESPONDENCE CIVIL AUDITS."

11 SO IT WOULD READ: "YOU'RE ABOUT TO HEAR EVIDENCE AND
12 TESTIMONY REGARDING I.R.S. NOTICES REGARDING ONLY
13 CORRESPONDENCE CIVIL AUDITS THAT THE I.R.S. CONDUCTED OF THE
14 DEFENDANT FOR THE YEARS 2003 THROUGH 2008."

15 IN THE SECOND SENTENCE PARAGRAPH IT READS: "I INSTRUCT
16 YOU THAT THIS EVIDENCE IS ADMITTED ONLY FOR THE LIMITED PURPOSE
17 OF PROVIDING EVIDENCE OF WHETHER THE DEFENDANT ACTED WILLFULLY
18 WHEN HE FILED THE TAX RETURNS ALLEGED IN THE INDICTMENT, AND,
19 THEREFORE, YOU MUST CONSIDER IT FOR ONLY THAT LIMITED PURPOSE
20 AND NOT FOR ANY OTHER PURPOSE."

21 I MODIFIED THAT SENTENCE BY THE FOLLOWING BETWEEN THE
22 WORDS "WHETHER" AND THE WORD "THE."

23 THE COURT: THE SECOND LINE?

24 MR. SCHAINBAUM: THE SECOND LINE, YOUR HONOR. IT'S
25 THE SECOND LINE OF THE SECOND SENTENCE PARAGRAPH.

1 I PUT BETWEEN THE WORD "WHETHER" AND "THE" "WHETHER OR NOT
2 THE DEFENDANT ACTED WILLFULLY."

3 AND FURTHER ON THAT SAME LINE WHERE IT SAYS, "FILED THE,"
4 I INSERTED "2007, 2008, AND 2009 TAX RETURNS ALLEGED IN THE
5 INDICTMENT."

6 ACCORDINGLY THE MODIFIED SENTENCE WOULD READ: "I INSTRUCT
7 YOU THAT THIS EVIDENCE IS ADMITTED ONLY FOR THE LIMITED PURPOSE
8 OF PROVIDING EVIDENCE OF WHETHER OR NOT THE DEFENDANT ACTED
9 WILLFULLY WHEN HE FILED THE 2007, 2008, AND 2009 TAX RETURNS
10 ALLEGED IN THE INDICTMENT, AND, THEREFORE, YOU MUST CONSIDER IT
11 ONLY FOR THAT LIMITED PURPOSE AND NOT FOR ANY OTHER PURPOSE."

12 THE COURT: OKAY. LET'S START WITH THIS LAST
13 PARAGRAPH. ANY OBJECTION?

14 MS. SISKIND: NOT TO THE SECOND PARAGRAPH CHANGES.

15 THE COURT: ALL RIGHT. SO I'LL READ THE SECOND
16 PARAGRAPH AS YOU AMENDED, MR. SCHAINBAUM.

17 MR. SCHAINBAUM: THANK YOU.

18 THE COURT: YOU'RE WELCOME. LET'S GO TO THE FIRST
19 PARAGRAPH AGAIN. IT SEEMS YOUR AMENDMENT ADDS LANGUAGE BETWEEN
20 THE WORDS "REGARDING" AND "AUDITS" IN THE FIRST LINE?

21 MR. SCHAINBAUM: CORRECT.

22 THE COURT: MS. SISKIND?

23 MS. SISKIND: I THINK THE PROPOSED CHANGES BY
24 MR. SCHAINBAUM ARE A LITTLE WORDY AND CONFUSING. I DON'T HAVE
25 AN OBJECTION TO PUTTING SOME ADDITIONAL WORDS IN THERE THAT

1 MODIFIES THE WORD "AUDIT" TO ADD A LITTLE MORE DETAIL, BUT I
2 THINK THE PARTICULAR DETAIL PROPOSED MAKES IT A LITTLE
3 CONFUSING.

4 THE COURT: THESE ARE CORRESPONDENCE AUDITS; IS THAT
5 CORRECT.

6 MS. SISKIND: I THINK WE CAN PUT THAT IN, FOR
7 EXAMPLE. THAT'S CORRECT.

8 MR. SCHAINBAUM: IT'S THE LOWEST FORM --

9 THE COURT: YOU'LL BE ABLE TO INTRODUCE LANGUAGE ON
10 THAT. I'M TRYING TO GET THE LANGUAGE. IF WE INSERT
11 "CORRESPONDENCE AUDITS."

12 MS. SISKIND: AND I THINK THAT WOULD BE CONSISTENT
13 WITH THE WITNESS'S TESTIMONY THAT THAT'S WHAT THESE THINGS ARE.

14 MR. SCHAINBAUM: I THINK I WOULD DO THAT IF YOU ALSO
15 ADD THE W.

16 ORD "CIVIL," "CORRESPONDENCE CIVIL AUDITS."

17 MS. SISKIND: I DON'T THINK THAT IS WHAT THE WITNESS
18 CALLED THEM. HE CALLED THEM CORRESPONDENCE AUDITS. SO I THINK
19 CORRESPONDENCE CIVIL AUDITS WOULD NOT BE AN APPROPRIATE WAY OF
20 REFERRING TO THEM. AT LEAST THERE'S BEEN NO EVIDENCE THAT
21 THAT'S WHAT THEY'RE CALLED.

22 THE COURT: THAT SUGGESTS AND INFERS, DOESN'T IT,
23 THAT THERE'S A CRIMINAL AUDIT. AND THERE'S NO EVIDENCE OF A
24 CRIMINAL AUDIT THAT HAS BEEN IMPOSED HERE, IF THERE IS SUCH A
25 THING.

1 MR. SCHAINBAUM: WELL, IT LEAVES -- IT WILL BE
2 CONFUSION BECAUSE IN THE SECOND PARAGRAPH YOU'RE TALKING ABOUT
3 FOR THE LIMITED PURPOSE OF WHETHER OR NOT HE WILLFULLY FILED
4 2007, '08, AND '09 TAX RETURNS.

5 SO THIS IS WHAT IT IS, IT'S A CIVIL CORRESPONDENCE AUDIT.
6 THERE'S NO CRIMINAL ASPECT TO IT, AND I'M NOT WEDDED TO THIS
7 PARTICULAR LANGUAGE.

8 I'M JUST WEDDED TO THE POINT THAT IT SHOULD BE POINTED OUT
9 THAT IT IS A CIVIL CORRESPONDENCE NOTICE -- OR A CIVIL NOTICE
10 OF A CORRESPONDENCE AUDIT.

11 IF YOU WANT TO PUT CIVIL NOTICE OF A CORRESPONDENCE
12 NOTICE -- AUDIT, THAT'S FINE.

13 MS. SISKIND: YOUR HONOR, IF WE JUST SAY
14 CORRESPONDENCE AUDIT, AND THEN MR. SCHAINBAUM CAN ELICIT ON THE
15 CROSS-EXAMINATION OF THE WITNESS THAT A CORRESPONDENCE AUDIT IS
16 A CIVIL PROCEEDING.

17 MR. SCHAINBAUM: BUT I THINK IF YOU'RE GOING TO GIVE
18 A LIMITING INSTRUCTION AND YOU'RE GOING TO USE THE TERMINOLOGY
19 WILLFULLY IN THE SECOND PARAGRAPH, YOU NEED TO BALANCE IT WITH
20 AN ACCURATE DESCRIPTION OF WHAT THE CORRESPONDENCE AUDIT IS.

21 THE COURT: ALL RIGHT. THANK YOU. I WILL AMEND THE
22 FIRST LINE.

23 AND, MR. SCHAINBAUM, I'M GOING TO AMEND IT WITH JUST THE
24 WORD "CORRESPONDENCE," AND I'M GOING TO RELY ON YOU IN YOUR
25 EXAMINATION TO ELICIT WHATEVER YOU'D LIKE ADDITIONALLY AS TO

1 WHAT THESE ARE. I'LL CERTAINLY GIVE YOU THE OPPORTUNITY TO DO
2 THAT.

3 SO THE FIRST LINE WILL BE "YOU ARE ABOUT TO HEAR EVIDENCE
4 AND TESTIMONY REGARDING CORRESPONDENCE AUDITS THAT THE I.R.S.
5 CONDUCTED OF THE DEFENDANT FOR THE YEARS 2003 THROUGH 2008."

6 THE SECOND PARAGRAPH WOULD READ: "I INSTRUCT YOU THAT
7 THIS EVIDENCE IS ADMITTED ONLY FOR THE LIMITED PURPOSE OF
8 PROVIDING EVIDENCE OF WHETHER OR NOT THE DEFENDANT ACTED
9 WILLFULLY WHEN HE FILED THE 2007, 2008, AND 2009 TAX RETURNS
10 ALLEGED IN THE INDICTMENT, AND, THEREFORE, YOU MUST CONSIDER IT
11 ONLY FOR THAT LIMITED PURPOSE AND NOT FOR ANY OTHER PURPOSE."

12 THAT'S WHAT I'LL READ TO THE JURY WHEN THESE 143 THROUGH
13 153 ARE INTRODUCED.

14 MR. SCHAINBAUM: RIGHT. WELL, I'LL OBJECT BECAUSE
15 REALLY WHAT WE'RE LOOKING AT IS NOTICES OF A CORRESPONDENCE
16 CIVIL AUDIT AND YOU HAVE LIMITED IT TO CORRESPONDENCE AND NOT
17 PUT IN THE WORD "NOTICE."

18 SO THERE IS A DISTINCTION, I BELIEVE, AND A DISTORTION IN
19 THERE, AND I WILL OBJECT TO THE LANGUAGE UNLESS IT'S MODIFIED
20 TO INDICATE EXACTLY WHAT IT IS.

21 THE COURT: I'M LOOKING AT 143 NOW, EXHIBIT 143 IN
22 THE BINDER. AND I'M LOOKING FOR A TITLE OF THE DOCUMENT. IF
23 COUNSEL CAN HELP ME?

24 MS. SISKIND: 143, THE TITLE OF THE DOCUMENT IS A
25 CP 2000. THAT'S WHAT THIS THING IS CALLED. AND IT'S IN THE

1 BOTTOM RIGHT AND ALSO ON THE TOP RIGHT OF THE NOTICE.

2 AND MR. OERTEL TESTIFIED THAT ALL OF THE NOTICES, WHICH
3 THEY HAVE SLIGHTLY DIFFERENT NUMBERS ON ALL OF THEM, THAT ALL
4 OF THE NOTICES IN 143 THROUGH 153 ARE THE TYPES OF NOTICES THAT
5 WOULD BE ISSUED AS PART OF A CORRESPONDENCE AUDIT.

6 THE COURT: WILL MR. OERTEL TESTIFY AS TO WHAT
7 CP 2000 MEANS.

8 MS. SISKIND: I BELIEVE HE'LL TESTIFY THAT IT'S A
9 NOTICE ISSUED BY THE I.R.S. AS PART OF AN AUDIT. I DON'T KNOW
10 EXACTLY WHAT WORDS HE'S GOING TO USE.

11 THE COURT: DO WE KNOW WHETHER THAT CP HAS SOME KIND
12 OF CONNOTATION AS TO CIVIL PROCEDURE 2000 OR SOMETHING LIKE
13 THAT? DOES IT INCLUDE THE WORD "CIVIL" DO WE KNOW?

14 MS. SISKIND: I DON'T KNOW THE ANSWER TO THAT.

15 MR. SCHAINBAUM: WELL, THAT'S WHAT CP REPRESENTS,
16 AND THERE'S NOWHERE THAT IT SAYS THIS IS AN AUDIT. IT SAYS
17 THIS IS A NOTICE, IT'S AN INQUIRY.

18 THE COURT: WELL, BUT I THINK, AND YOU COUNSEL
19 AGREE, THAT THIS WAS A LETTER AUDIT?

20 MR. SCHAINBAUM: CORRESPONDENCE.

21 MS. SISKIND: CORRESPONDENCE.

22 THE COURT: CORRESPONDENCE AUDIT IS WHAT THE
23 EVIDENCE SHOWS.

24 MR. SCHAINBAUM: BUT THE WAY IT'S SET UP, IT'S NOT
25 REALLY AN AUDIT BECAUSE THEY'RE JUST ASKING QUESTIONS OR

1 MAKING -- OR PROVIDING INFORMATION, FOR EXAMPLE, THOSE GRIDS
2 PROVIDED INFORMATION AS TO INTEREST AND THERE WAS OTHER GRIDS
3 THAT WERE ELIMINATED.

4 THE COURT: SO LET ME JUST ASK YOU, I THOUGHT THERE
5 WAS AGREEMENT THAT THESE WERE CONSIDERED AUDITS OF A CERTAIN
6 TYPE BY COUNSEL YESTERDAY. AND THAT'S WHAT THESE ARE.

7 MR. SCHAINBAUM: WELL, I'M LOOKING AT THESE CLOSER
8 AND I'M LOOKING AT -- AND ACTUALLY, THE COURT --

9 THE COURT: LET'S DO THIS, WHY DON'T WE BRING THE
10 WITNESS IN AND ASK HIM TO DEFINE WHAT THIS IS AND WHAT THE CP
11 IS AND MAYBE THAT WILL BE HELPFUL.

12 MR. SCHAINBAUM: OKAY.

13 MS. SISKIND: SURE.

14 THE COURT: OUTSIDE OF THE PRESENCE OF THE JURY, OF
15 COURSE.

16 MS. SISKIND: WHAT IF WE JUST SAY INSTEAD OF
17 "CORRESPONDENCE AUDIT" WE SAY "YOU ARE ABOUT TO HEAR TESTIMONY
18 REGARDING NOTICES THAT THE DEFENDANT RECEIVED FROM THE I.R.S.
19 REGARDING TAX YEARS 2003 TO 2008." JUST LEAVE IT VERY GENERIC
20 AT THE WORD "NOTICES"?

21 MR. SCHAINBAUM: RIGHT. BUT I STILL WOULD LIKE TO
22 HEAR WHAT THE WITNESS SAYS.

23 THE COURT: WELL, I ASKED YOU TO COME IN HERE JUST
24 FOR THIS DEFINITION PURPOSE. IF YOU AGREE WITH THIS, WE WON'T
25 NEED THIS TESTIMONY.

1 MR. SCHAINBAUM: IT WOULD BE HELPFUL TO ME TO GET MY
2 AGREEMENT.

3 THE COURT: SO RIGHT NOW IT'S SUGGESTED "NOTICE
4 AUDITS"?

5 MS. SISKIND: NO, JUST THE WORD --

6 MR. SCHAINBAUM: NOTICES.

7 THE COURT: NOTICES. SO IT READS "REGARDING NOTICES
8 THAT THE I.R.S."

9 MS. SISKIND: "THAT THE DEFENDANT RECEIVED FROM THE
10 I.R.S. REGARDING THE YEARS 2003 THROUGH 2008."

11 MR. SCHAINBAUM: I WOULD SUGGEST REGARDING CIVIL
12 NOTICES THAT THE I.R.S. ISSUED TO THE DEFENDANT FOR THE YEARS
13 2003 THROUGH 2008.

14 MS. SISKIND: YOUR HONOR, THAT GETS BACK TO THE
15 DEFENSE CAN ELICIT THE CIVIL NATURE OF THESE IN ANOTHER MATTER.

16 THE COURT: I UNDERSTAND. SO LET'S -- MR. OERTEL IS
17 ON THE WITNESS STAND NOW.

18 **(GOVERNMENT'S WITNESS, JAMES OERTEL, PREVIOUSLY SWORN.)**

19 THE COURT: MS. SISKIND, DID YOU WANT TO ASK
20 QUESTIONS REGARDING THE DESIGNATION CP 2000?

21 MS. SISKIND: SURE.

22 Q. DO YOU WANT TO TURN TO 143, PLEASE, MR. OERTEL?

23 A. OKAY. YES, IT'S ALREADY OPEN.

24 Q. AND DO YOU KNOW WHAT THE CP AND CP 2000 STANDS FOR?

25 A. COMPLIANCE PROGRAM.

1 THE COURT: MR. OERTEL, WHAT IS 143 TITLED? I SEE
2 THE FIRST PAGE, AND WE ALL SEE THAT. WHAT IS THIS DOCUMENT
3 TITLED?

4 THE WITNESS: THIS WOULD BE A CP 2000 NOTICE. IT
5 DOESN'T ACTUALLY HAVE A TITLE ON IT. IT'S -- I WOULD CALL IT A
6 CP 2000 NOTICE OR LETTER.

7 THE COURT: NOTICE?

8 THE WITNESS: OR LETTER.

9 THE COURT: OR LETTER?

10 THE WITNESS: YEAH, BECAUSE YOU DO IT IN LETTER
11 FORM, AND IT IS A NOTICE. SO IT'S BOTH THINGS.

12 THE COURT: ANY FURTHER QUESTIONS, MS. SISKIND?

13 MR. SCHAINBAUM, ANY QUESTIONS ON THIS TOPIC?

14 MR. SCHAINBAUM: NO.

15 THE COURT: THANK YOU, SIR. YOU CAN -- I'M GOING TO
16 ASK YOU TO GO BACK OUTSIDE.

17 THE WITNESS: OKAY.

18 THE COURT: WE'LL CALL YOU IN, IN JUST A MOMENT.

19 THE WITNESS: OKAY.

20 THE COURT: YOU'VE BEEN VERY HELPFUL. THANK YOU.

21 ALL RIGHT. THE RECORD SHOULD REFLECT THAT MR. OERTEL HAS
22 LEFT THE COURTROOM.

23 MS. SISKIND.

24 MS. SISKIND: THE CP, AS HE TESTIFIED, DOES NOT
25 STAND FOR -- THE "C" IS NOT FOR CIVIL. SO WE WOULD SUGGEST

1 THAT EITHER THE SENTENCE BE AS THE COURT PROPOSED IT JUST
2 ADDING THE WORD "CORRESPONDENCE" OR THE SENTENCE STRUCTURE
3 CHANGE AND REFER GENERALLY TO NOTICES.

4 EITHER OF THOSE WOULD BE AGREEABLE TO THE GOVERNMENT.

5 MR. SCHAINBAUM: I WOULD ADOPT WHAT MR. OERTEL SAID
6 THAT IT'S A COMPLIANCE PROGRAM NOTICE OR LETTER. PUT THAT
7 IN --

8 THE COURT: I DON'T THINK HE SAID THAT.

9 MR. SCHAINBAUM: WHAT?

10 THE COURT: I DON'T THINK HE SAID THAT.

11 MR. SCHAINBAUM: HE SAID COMPLIANCE PROGRAM, THAT IS
12 WHAT CP STANDS FOR.

13 THE COURT: HE DID SAY THAT.

14 MR. SCHAINBAUM: SO THAT'S WHAT THE NOTICE IS.

15 THE COURT: HE DIDN'T SAY THAT.

16 MR. SCHAINBAUM: SO WHAT IS THAT?

17 THE COURT: HE SAID THAT IT'S -- HE SAID IT WOULD BE
18 A CP 2000 NOTICE. IT DOESN'T HAVE A TITLE ON IT. I WOULD CALL
19 IT A CP 2000 NOTICE OR LETTER. THAT'S WHAT HE SAID.

20 MR. SCHAINBAUM: AND THAT'S WHAT I WOULD GO WITH.

21 MS. SISKIND: AND FOR THE RECORD, YOUR HONOR,
22 THEY'RE NOT ALL CP 2000. SO IF WE'RE GOING TO USE THAT IN THE
23 INSTRUCTION THEN THE COURT WOULD HAVE TO LIST OUT EVERY TYPE OF
24 NOTICE AND THERE ARE OTHER TYPES.

25 MR. SCHAINBAUM: YOUR HONOR, I BELIEVE THAT ALL OF

1 THOSE NOTICES ARE DERIVATIONS. SOME ARE CP 2500, SOME ARE
2 CP 2501. SO THEY'RE ALL COMPLIANCE --

3 THE COURT: LET ME ASK YOU THIS --

4 MR. SCHAINBAUM: -- NOTICES OR LETTERS.

5 THE COURT: SO I'M INCLINED TO READ: "YOU ARE ABOUT
6 TO HEAR EVIDENCE OR TESTIMONY REGARDING LETTER NOTICES THAT THE
7 I.R.S. CONDUCTED OF THE DEFENDANT."

8 MS. SISKIND: OR "SENT TO THE DEFENDANT"?

9 THE COURT: "SENT TO THE DEFENDANT."

10 MR. SCHAINBAUM: SENT TO THE DEFENDANT.

11 MS. SISKIND: "FOR THE YEARS 2003 THROUGH 2008"?

12 THE COURT: YES, I WILL COMPLETE THAT.

13 SO THE SENTENCE WILL READ: "YOU ARE ABOUT TO HEAR
14 EVIDENCE AND TESTIMONY REGARDING LETTER NOTICES THAT THE I.R.S.
15 SENT TO THE DEFENDANT FOR THE YEARS 2003 THROUGH 2008."

16 THAT'S WHAT I'LL READ. ANY OBJECTION, MR. SCHAINBAUM?

17 MR. SCHAINBAUM: I WOULD PREFER HAVING THE WORD
18 "COMPLIANCE" AS THE WITNESS TESTIFIED, BUT I WILL ACCEPT THE
19 COURT'S INTERPRETATION FOR THIS LIMITING INSTRUCTION, ALTHOUGH
20 I OBJECT TO THE WHOLE LIMITING INSTRUCTION ITSELF AS A
21 CONTINUING OBJECTION THAT NEITHER THE DOCUMENTS NOR THE
22 LIMITING INSTRUCTION SHOULD BE GIVEN.

23 THE COURT: ALL RIGHT. SO NOTED. THANK YOU.

24 MR. SCHAINBAUM: YOU'RE WELCOME.

25 THE COURT: AND SHOULD WE CALL OUR JURY AND WITNESS

DIRECT OERTEL
1 IN THEN?

2 MS. SISKIND: YES, PLEASE.

3 THE COURT: LET'S DO THAT.

4 (JURY IN AT 10:57 A.M.)

5 THE COURT: PLEASE BE SEATED. THANK YOU VERY MUCH.

6 ALL RIGHT. THE RECORD SHOULD REFLECT THAT WE ARE BACK ON THE
7 RECORD IN THE DESAI MATTER. ALL COUNSEL AND THE DEFENDANT ARE
8 PRESENT. OUR JURY AND ALTERNATES ARE PRESENT.

9 MR. OERTEL IS BACK ON THE STAND. SIR, I'LL REMIND YOU
10 YOU'RE STILL UNDER OATH.

11 THE WITNESS: OKAY.

12 **DIRECT EXAMINATION** (RESUMED)

13 BY MS. SISKIND:

14 Q. MR. OERTEL BEING WHEN WE LEFT YESTERDAY, WE WERE TALKING
15 ABOUT CORRESPONDENCE AUDITS. DO YOU RECALL THAT?

16 A. YES.

17 Q. AND CAN YOU REMIND THE JURY WHAT A CORRESPONDENCE AUDIT
18 IS?

19 A. THAT'S WHERE THE I.R.S. BASICALLY BY MAIL TELLS YOU THAT
20 THERE'S SOME KIND OF DISCREPANCY OR SOMETHING BETWEEN WHAT THE
21 COMPUTER HAS RECEIVED ABOUT YOUR INCOME AND WHAT YOUR TAX
22 RETURN SHOWS AS YOUR INCOME.

23 Q. WAS MR. DESAI THE SUBJECT OF I.R.S. CORRESPONDENCE AUDITS
24 FOR THE YEARS 2003 THROUGH 2008?

25 A. YES.

Q. AND HAVE YOU REVIEWED RECORDS RELATING TO THOSE
CORRESPONDENCE AUDITS?

A. YES.

Q. ARE YOU FAMILIAR WITH SOMETHING CALLED AN I.R.S. ACCOUNT
TRANSCRIPT OR A TRANSCRIPT OF ACCOUNT?

A. YES.

Q. AND CAN YOU TURN TO WHAT HAS BEEN MARKED FOR
IDENTIFICATION AS GOVERNMENT'S EXHIBITS 163 THROUGH 169.

A. OKAY.

Q. AND JUST TAKE A MOMENT AND FLIP THROUGH THOSE, IF YOU
WOULD.

A. OKAY.

Q. DO 163 THROUGH 169 CONTAIN ACCOUNT TRANSCRIPTS FOR ASHVIN
AND NILA DESAI FOR THE YEARS 2003 THROUGH 2009?

A. THAT'S CORRECT.

MS. SISKIND: YOUR HONOR, THE GOVERNMENT MOVES FOR
THE ADMISSION OF 163 THROUGH 169.

MR. SCHAINBAUM: NO OBJECTION.

THE COURT: THEY'RE RECEIVED WITHOUT OBJECTION.

(GOVERNMENT'S EXHIBITS 163-169 WERE RECEIVED IN EVIDENCE.)
BY MS. SISKIND:

Q. AND IF YOU COULD TAKE A LOOK AT GOVERNMENT'S EXHIBITS 143
THROUGH 153. ARE THESE DOCUMENTS THAT YOU REVIEWED BEFORE YOUR
TESTIMONY HERE TODAY?

A. YES.

Q. AND DO 143 THROUGH 153 CONTAIN NOTICES AND LETTERS THAT WERE ISSUED BY THE I.R.S. TO THE DEFENDANT AS PART OF CORRESPONDENCE AUDITS FOR THE YEARS 2003 THROUGH 2008?

A. YES.

MS. SISKIND: THE GOVERNMENT MOVES FOR THE ADMISSION OF 143 THROUGH 153.

THE COURT: ANY OBJECTION?

MR. SCHAINBAUM: NO OBJECTION.

THE COURT: THEY'RE RECEIVED WITHOUT OBJECTION.

(GOVERNMENT'S EXHIBIT 143-153 WERE RECEIVED IN EVIDENCE.)

THE COURT: ARE YOU GOING TO ELICIT TESTIMONY ON THESE ITEMS NOW?

MS. SISKIND: YES, YOUR HONOR.

THE COURT: LADIES AND GENTLEMEN, I WANT TO GIVE YOU AN INSTRUCTION NOW REGARDING THIS EVIDENCE. YOU ARE ABOUT TO HEAR EVIDENCE AND TESTIMONY REGARDING LETTER NOTICES THAT THE I.R.S. SENT TO THE DEFENDANT FOR THE YEARS 2003 THROUGH 2008.

I INSTRUCT YOU THAT THIS EVIDENCE IS ADMITTED ONLY FOR THE LIMITED PURPOSE OF PROVIDING EVIDENCE OF WHETHER OR NOT THE DEFENDANT ACTED WILLFULLY WHEN HE FILED THE 2007, 2008, AND 2009 TAX RETURNS ALLEGED IN THE INDICTMENT, AND, THEREFORE, YOU MUST CONSIDER IT ONLY FOR THAT LIMITED PURPOSE AND NOT FOR ANY OTHER PURPOSE. THANK YOU.

MS. SISKIND.

BY MS. SISKIND:

Q. IF WE COULD START -- AS SOON AS YOU HAVE YOUR WATER.

A. SORRY.

MS. SISKIND: MS. LANE, IF YOU COULD PULL UP 143,
PLEASE.

THE WITNESS: OKAY. I HAVE 143 UP.

BY MS. SISKIND:

Q. OKAY. WHAT IS EXHIBIT 143?

A. THIS WOULD BE CALLED -- OH, EXCUSE ME. THIS WOULD BE
CALLED A CP 2000 NOTICE LETTER.

Q. AND JUST WHAT TAXPAYER OR TAXPAYERS DOES THIS NOTICE
PERTAIN TO?

A. ASHVIN AND NILA DESAI.

Q. AND DOES IT RELATE TO A PARTICULAR TAX YEAR?

A. 2003.

Q. AND WHAT IS THE DATE OF THIS NOTICE?

A. MARCH 28, 2005.

Q. AND IS A CP 2000 THE TYPE OF NOTICE THAT WOULD BE ISSUED
AS PART OF A CORRESPONDENCE AUDIT?

A. YES.

Q. AND CAN YOU READ WHAT IT SAYS UNDER "NUMBER 1. WHY ARE
YOU GETTING THIS NOTICE?"

A. "THE INCOME AND PAYMENT INFORMATION (E.G. INCOME TAX
WITHHELD, WAGES, MISCELLANEOUS INCOME, INTEREST, ET CETERA)
THAT WE HAVE ON FILE DOES NOT MATCH ENTRIES ON YOUR 2003 FORM
1040. IF THIS INFORMATION IS CORRECT, YOU WILL OWE \$10,266."

Q. AND UNDER NUMBER 2 CAN YOU READ WHAT THE NOTICE SAYS ABOUT "WHAT STEPS YOU SHOULD TAKE?"

A. "FOLLOWING THESE STEPS CAN HELP YOU UNDERSTAND THIS NOTICE.

"1. REVIEW YOUR 2003 TAX RETURN.

"2. COMPARE YOUR RETURN TO THE INFORMATION IN THE EXPLANATION SECTION -- PAGE 5.

"3. DECIDE IF THE INFORMATION IN THE EXPLANATION SECTION IS CORRECT.

"4. CHECK THE ANSWERS TO FREQUENTLY ASKED QUESTIONS -- PAGE 2.

"5. COMPLETE AND RETURN THE RESPONSE FORM IN THE ENCLOSED ENVELOPE -- PAGE 3.

"6. COMPLETE AND RETURN THE INSTALLMENT AGREEMENT REQUEST (ENCLOSED) IF YOU NEED TO SET UP A PAYMENT PLAN.

"7." WHICH IS THE LAST ONE, "REVIEW YOUR RIGHTS IN THE EXAMINATION PROCESS BOOKLET."

Q. IF YOU TURN TO THE NEXT PAGE, DO YOU SEE A SECTION "HOW CAN I PREVENT AN ERROR IN THE FUTURE?"

A. YES.

Q. AND CAN YOU READ WHAT NUMBER 1 SAYS?

A. "NUMBER 1. "INCLUDE ALL," "ALL" IS UNDERLINED, "INCLUDE ALL INCOME YOU'VE RECEIVED DURING THE YEAR ON YOUR TAX RETURN."

Q. NOW, DOES THIS NOTICE CONTAIN A LIST OF ITEMS THAT THE I.R.S. IS SAYING THAT DO NOT MATCH -- THAT THERE ARE A

DISCREPANCY BETWEEN THEIR RECORDS AND THE TAX RETURN?

A. YES.

Q. AND DOES THAT LIST START ON PAGE 5?

A. PAGE 5.

Q. CAN YOU READ WHAT IT SAYS UNDER "1. INFORMATION REPORTED TO THE I.R.S. THAT DIFFERS FROM THE AMOUNT SHOWN ON THE TAX RETURN"?

A. WHICH PART WOULD YOU LIKE ME TO READ?

Q. JUST THE FIRST PARAGRAPH, PLEASE?

A. "THIS SECTION TELLS YOU SPECIFICALLY WHAT INCOME INFORMATION THE I.R.S. HAS RECEIVED ABOUT YOU FROM OTHERS, (INCLUDING YOUR EMPLOYERS, BANKS, MORTGAGE HOLDERS, ET CETERA.) THE INFORMATION LISTED BELOW DOES NOT MATCH THE INFORMATION THAT YOU LISTED ON YOUR TAX RETURN. USE THIS TABLE TO COMPARE THE DATA I.R.S. HAS RECEIVED FROM OTHERS TO THE INFORMATION YOU LISTED ON YOUR TAX RETURN TO UNDERSTAND WHERE THE DISCREPANCY OR DIFFERENCE OCCURRED."

Q. AND THEN DO YOU SEE A CHART THAT -- OR TABLE THAT STARTS BELOW?

A. YES.

Q. AND WHAT IS -- WHAT ARE THESE THINGS THAT ARE LISTED AS ITEMS IN THIS TABLE?

A. ON THIS PAGE THERE IS THREE ITEMS OF INTEREST.

Q. AND WHY ARE THEY INCLUDED IN THIS TABLE?

A. WELL, IT SAYS INTEREST, AND THEN IT SAYS THE BANK. IT

1 GIVES THE ACCOUNT INFORMATION, AND THEN IT SAYS AMOUNT REPORTED
2 TO THE I.R.S. BY OTHERS, AND IT GIVES AN AMOUNT.

3 AND THEN IT COMPARES WHAT IS ON THE RETURN, AND THEN IT
4 SHOWS THE DIFFERENCE.

5 Q. SO LOOKING AT ITEM NUMBER 1, HOW MUCH INTEREST DID BANK OF
6 AMERICA REPORT TO THE I.R.S. FOR THIS ACCOUNT ON A 1099?

7 A. FOR THIS BANK OF AMERICA ACCOUNT IT'S \$2,051.

8 Q. AND HOW MUCH WAS REPORTED ON THE DEFENDANT'S TAX RETURN?

9 A. NONE.

10 Q. HOW MANY ITEMS OF INTEREST INCOME ARE ON THIS PAGE?

11 A. THREE.

12 Q. AND ARE THERE MORE ON THE NEXT PAGE?

13 A. THERE'S FIVE MORE ON THE NEXT PAGE.

14 Q. ANY ON THE PAGE AFTER THAT?

15 A. FIVE MORE.

16 Q. AND ON THE EIGHTH PAGE?

17 A. ONE MORE INTEREST ONE.

18 Q. AND WHAT IS THE TOTAL AMOUNT OF INTEREST INCOME THAT
19 ACCORDING TO THIS NOTICE WAS REPORTED TO THE I.R.S. BY OTHERS?

20 A. \$22,529.

21 Q. AND HOW MUCH WAS INCLUDED ON THE TAX RETURN?

22 A. 22,975.

23 Q. AND SO WHAT IS THE DIFFERENCE BETWEEN THE TWO?

24 A. \$553.

25 Q. AND, NOW, WHEN A TAXPAYER GETS A NOTICE LIKE THIS AS PART

OF A CORRESPONDENCE AUDIT, ARE THEY GIVEN A CHANCE TO RESPOND?

A. YES.

Q. IF YOU COULD GO TO EXHIBIT 144.

A. OKAY.

Q. AND IS THIS ANOTHER NOTICE THAT ASHVIN AND NILA DESAI
RECEIVED FROM THE I.R.S. REGARDING THEIR 2003 TAXES?

A. YES.

Q. AND WHAT IS THE DATE OF THIS NOTICE?

A. JUNE 13TH, 2005.

Q. AND WHAT DOES IT SAY UNDER "WHY ARE YOU GETTING THIS
NOTICE?"

A. "WE RECEIVED YOUR RESPONSE TO OUR PREVIOUS NOTICE DATED
3-28-2005. WE USED THE INFORMATION YOU PROVIDED TO REFIGURE
OUR ORIGINAL PROPOSAL. AS A RESULT, THE PROPOSED EXCHANGES TO
YOUR TAX ARE LISTED BELOW." AND THEN THERE'S A CHART.

Q. IF YOU COULD FLIP ALL OF THE WAY TO THE LAST PAGE OF THIS
EXHIBIT?

A. OKAY.

Q. IN THE CHART AT THE TOP OF THE PAGE DO YOU SEE THE SAME
REFERENCE TO INTEREST INCOME FROM THE PREVIOUS NOTICE?

A. YES.

Q. AND THE SAME AMOUNTS?

A. LET'S SEE. WELL, THERE'S STILL A \$553 DIFFERENCE.

Q. AND SO ARE THE AMOUNTS THE SAME?

A. YES.

Q. NOW, IF YOU COULD TURN TO -- WELL, ACTUALLY, LET ME ASK YOU THIS, AT THE BOTTOM CHART DO YOU SEE TOTAL AMOUNT YOU OWE?

A. YES.

Q. AND HOW MUCH IS THE I.R.S. SAYING THAT THE DESAIS OWE AS PART OF THIS AUDIT?

A. \$5,269.

Q. NOW, IF YOU GO -- IF YOU FLIP TO EXHIBIT 163.

A. OKAY.

Q. IS THIS THE ACCOUNT TRANSCRIPT FOR THE DESAIS FOR 2003?

A. YES, IT IS.

Q. AND ON THIS DOCUMENT IS THERE A REFERENCE TO THE FACT THAT AN AUDIT OCCURRED FOR THAT YEAR?

A. LET'S SEE. WELL, THERE IS ADDITIONAL TAX ASSESSED.

Q. AND IS THAT ON THE SECOND PAGE?

A. YES, IT IS.

Q. AND WHAT IS THE CODE FOR THAT?

A. THAT'S A 290 POSTING.

Q. TAKING A LOOK AT THIS TRANSCRIPT, CAN YOU TELL WHETHER THE DEFENDANT -- WHETHER THE DESAIS PAID THE AMOUNT THAT THE I.R.S. SAID THAT THEY OWED FOR THAT AUDIT?

A. YES. THERE WAS A 640 POSTING. A 640 POSTING IS WHEN THE TAXPAYER GETS A PAYMENT AND THEY PAID \$5,269.

Q. AND WHAT IS THE DATE OF THIS TRANSCRIPT? WHAT DATE IS IT CURRENT AS OF?

A. THE DATE AT THE BOTTOM IS 9-19-2003.

Q. AND 2003?

A. I'M SORRY. 2013.

Q. WAS THAT YESTERDAY?

A. YES.

Q. WHAT IS THE DESAIS' BALANCE FOR THE 2003 TAX YEAR AS OF
YESTERDAY?

A. ZERO.

Q. THOSE TWO CORRESPONDENCE AUDITS NOTICES THAT YOU LOOKED AT
IN EXHIBITS 143 AND 144, WAS THERE ANY MENTION OF THEM OF
INTEREST INCOME FROM HSBC INDIA?

A. NO, NOT THAT I SAW. NO.

Q. AND AS FAR AS YOU CAN TELL FROM THESE DOCUMENTS, DID THE
CORRESPONDENCE AUDIT HAVE ANYTHING TO DO WITH INTEREST INCOME
FROM HSBC INDIA?

A. NO.

Q. IF YOU COULD GO TO EXHIBIT 145.

A. OKAY.

Q. IS THIS A NOTICE THAT THE I.R.S. ISSUED TO THE DESAIS FOR
THE 2004 TAX YEAR?

A. YES.

Q. AND, AGAIN, IS IT A CP 2000?

A. THAT'S RIGHT.

Q. AND WHAT IS THE DATE OF THIS NOTICE?

A. OCTOBER 30, 2006.

Q. AND, AGAIN, WHAT WAS THE PURPOSE OF THIS NOTICE?

1 A. THEY'RE SAYING THAT THERE'S INCOME THAT DOESN'T SHOW UP ON
2 THE DEFENDANT'S TAX RETURN.

3 Q. AND IF YOU LOOK AT THE SECOND PAGE, ONCE AGAIN, COULD YOU
4 READ UNDER WHAT IS UNDER "HOW CAN I PREVENT AN ERROR IN THE
5 FUTURE?"

6 A. "NUMBER 1. "INCLUDE ALL," AGAIN, "ALL" IS UNDERLINED,
7 "INCOME YOU'VE RECEIVED DURING THE YEAR ON YOUR TAX RETURN."

8 Q. DOES THIS NOTICE FOR THE 2004 TAX YEAR ALSO INCLUDE
9 SPECIFIC ITEM OR ITEMS OF INCOME THAT THE I.R.S. SAYS WERE LEFT
10 OFF OF TAX RETURN?

11 A. YES.

12 Q. AND IS THAT ON PAGE 6 OF 15?

13 A. YES.

14 Q. AND WHAT IS THAT ITEM IN THIS CASE?

15 A. ON PAGE 6 IT'S INTEREST FROM A CITIBANK ACCOUNT.

16 Q. AND HOW MUCH INCOME?

17 A. \$63,391.

18 Q. AND IS THAT WHAT CITIBANK REPORTED TO THE I.R.S. ON A FORM
19 1099?

20 A. YES, THEY DID.

21 Q. AND HOW MUCH OF THAT WAS REPORTED ON THE DEFENDANT'S TAX
22 RETURN?

23 A. 63 -- OH, ACTUALLY NONE WAS REPORTED. SO THE DIFFERENCE
24 IS 63,391.

25 Q. AND IF YOU TURN TO PAGE 14 OF 15?

A. I'M SORRY. WHICH PAGE?

Q. 14 OF 15. IT SAYS IN THE TOP RIGHT CORNER.

A. YES.

Q. AND IS THERE A TOTAL AMOUNT IN THE BOTTOM CHART THAT THE I.R.S. SAYS THAT THE DESAIS OWE AS A RESULT OF THE 2004 CORRESPONDENCE AUDIT?

A. YES, IT SAYS \$22,513.

Q. AND IF YOU GO TO EXHIBIT 164.

A. OKAY.

Q. IS THIS THE TRANSCRIPT OF ACCOUNT FOR THE DESAIS FOR 2004?

A. YES. IT IS DATED YESTERDAY.

Q. AND ACCORDING TO THE ACCOUNT BALANCE INFORMATION, HAVE THE DESAIS PAID EVERYTHING THAT THE I.R.S. REQUIRED OF THEM FOR 2004 BASED ON THAT AUDIT?

A. WELL, BASED ON THE AUDIT, YES.

Q. AND DID THAT AUDIT HAVE ANYTHING TO DO WITH INTEREST INCOME FROM HSBC INDIA?

A. NO.

Q. IF YOU COULD GO TO EXHIBIT 146, PLEASE.

A. OKAY.

Q. IS THIS ANOTHER NOTICE ISSUED TO THE DESAIS AS PART OF A CORRESPONDENCE AUDITS?

A. YES.

Q. AND FOR WHAT TAX YEAR?

A. 2005 AND IT'S DATED MAY 29TH, 2007.

Q. AND DID THIS NOTICE HAVE THE SAME NOTICE AS THE PREVIOUS NOTICES THAT WE LOOKED AT?

A. YES.

Q. AND IF YOU START AT PAGE 5 -- DO YOU SEE A CHART THAT LISTS OUT ITEMS OF INCOME THAT THE I.R.S. SAYS WAS MISSING FROM THE DEFENDANT'S I.R.S. TAX RETURN?

A. YES, THIS IS JUST A -- YEAH, THERE ARE TWO LISTS ON PAGE 5.

Q. AND WHAT TYPES OF INCOME?

A. INTEREST.

Q. AND WHAT BANKS ARE THEY FROM?

A. WELL, ONE IS FROM CITIBANK GLOBAL, AND THE OTHER IS FROM CITIBANK SINGAPORE.

Q. AND IF YOU FLIP TWO MORE PAGES FORWARD ONTO PAGE 7, DO YOU SEE MORE ITEMS OF INTEREST INCOME THAT THE I.R.S. IS SAYING WERE OMITTED FROM THE DEFENDANT'S 2005 TAX RETURN?

A. YES. THERE'S TWO MORE ITEMS OF INTEREST BOTH FROM CITIGROUP.

Q. IF YOU COULD TURN TO EXHIBIT 147.

A. OKAY.

Q. IS THIS ANOTHER NOTICE THAT THE I.R.S. ISSUED TO THE DESAIS AS PART OF THE 2005 CORRESPONDENCE AUDITS?

A. YES.

Q. AND WHAT IS THE DATE OF THIS NOTICE?

A. SEPTEMBER 17, 2007.

Q. AND LOOKING THROUGH THE PAGES OF THIS NOTICE, FOR EXAMPLE,
ON PAGE 6, ARE THERE MORE REFERENCES TO INTEREST INCOME?

A. YES, THERE ARE.

Q. HOW ABOUT ON PAGE 8 OF 18?

A. YES.

Q. MORE REFERENCES TO INTEREST INCOME THERE?

A. THAT'S CORRECT.

Q. AND IF YOU GO TO PAGE 17 OF 18, DO YOU SEE THE SECTION
CHANGES TO YOUR INCOME AND DEDUCTIONS?

A. YES.

Q. AND WHAT WAS THE -- ACCORDING TO THIS NOTICE, WHAT WAS THE
TOTAL AMOUNT OF INTEREST INCOME AS SHOWN ON THE DEFENDANT'S
2005 TAX RETURN?

A. \$51,655.

Q. AND HOW MUCH INTEREST INCOME WAS REPORTED TO THE I.R.S.?

A. \$139,541.

Q. FOR A DIFFERENCE OF HOW MUCH?

A. \$87,886.

Q. DOES THIS PAGE ALSO TELL THE DESAIS HOW MUCH THE I.R.S.
HAS DETERMINED THAT THEY OWE AS A RESULT OF THIS AUDIT?

A. YEAH, \$65,020.

Q. AND IF YOU FLIP TO EXHIBIT 165, IS THIS -- I'LL LET YOU
GET THERE.

A. OKAY.

Q. IS THIS AN ACCOUNT TRANSCRIPT FOR THE DEFENDANT AND HIS

WIFE FOR THE YEAR 2005?

A. YES.

Q. AND AS OF YESTERDAY'S DATE WHAT IS THEIR ACCOUNT BALANCE?

A. IT'S ZERO.

Q. AND WHAT DOES THAT MEAN IN TERMS OF WHETHER THEY PAID WHAT THE I.R.S. SAID THAT THEY OWED FROM THIS AUDIT?

A. IT SHOWS THAT THEY PAID IT.

Q. AND DID THAT AUDIT OF THEIR 2005 TAXES HAVE ANYTHING TO DO WITH INTEREST INCOME FROM HSBC INDIA?

A. NO, MA'AM.

Q. IF YOU CAN GO TO EXHIBIT 148?

A. GOT IT.

Q. IS THIS NOTICE THAT WOULD HAVE BEEN ISSUED TO THE DESAIS AS PART OF AN AUDIT OF THEIR 2006 TAXES?

A. YES, AND IT'S DATED MARCH 17TH, 2008.

Q. LOOKING AT PAGE 5, DOES THIS NOTICE CONTAIN A LIST OF INTEREST INCOME ITEMS THAT THE I.R.S. SAYS ARE MISSING FROM THE TAX RETURN?

A. YES.

Q. AND ARE THERE TWO OF THEM LISTED ON PAGE 5?

A. YES. ON PAGE 5 THERE'S A 1099 FROM CITIBANK AND THEN ANOTHER 1099 FROM PAN PACIFIC.

Q. AND IS THERE ONE MORE 1099 FROM CITIBANK REFERENCED ON THE NEXT PAGE?

A. YES.

Q. IF YOU COULD GO TO EXHIBIT 149, PLEASE.

A. OKAY.

Q. AND IS THIS ANOTHER NOTICE THAT WOULD HAVE GONE OUT TO THE DESAIS AS PART OF THE 2006 AUDIT?

A. YES, DATED JUNE 2, 2008.

Q. AND DOES THIS DOCUMENT ALSO CONTAIN REFERENCES TO INTEREST INCOME THAT WAS NOT REPORTED ON THE DESAIS' 2006 TAX RETURN?

A. YES.

Q. IF YOU GO TO THE VERY LAST PAGE OF THIS EXHIBIT, HOW MUCH INTEREST INCOME WAS REPORTED ON THE DESAIS'S 2006 RETURN?

A. SHOWN ON THE RETURN 60,338.

Q. AND HOW MUCH WAS ACTUALLY REPORTED TO THE I.R.S.?

A. THE I.R.S. WAS -- GOT REPORTED \$233,386.

Q. SO HOW MUCH WAS MISSING FROM THE DEFENDANT'S TAX RETURN ACCORDING TO THIS AUDIT?

A. FROM INTEREST IT IS \$173,048.

Q. AND DID THE DESAIS OWE MONEY TO THE I.R.S. FOLLOWING THIS AUDIT?

A. \$64,933.

Q. AND IF YOU FLIP TO GOVERNMENT'S EXHIBIT 166?

A. OKAY.

Q. IS THIS THE ACCOUNT TRANSCRIPT FOR 2006 FOR THE DESAIS?

A. YES, MA'AM.

Q. AND WHAT IS THEIR ACCOUNT BALANCE AS OF YESTERDAY?

A. AS OF YESTERDAY? ZERO.

Q. DID THE AUDIT THAT RESULTED IN THE DESAIS OWING MORE MONEY FOR 2006, HAVE ANYTHING TO DO WITH UNREPORTED INTEREST INCOME FROM HSBC INDIA?

A. NO, MA'AM.

Q. IF YOU COULD GO TO EXHIBIT 150, PLEASE.

A. OKAY.

Q. IS THIS A NOTICE THAT IS PART OF A CORRESPONDENCE AUDIT FOR 2007?

A. YES, DATED FEBRUARY 2, 2009.

Q. AND FOCUSING ON PAGE 5, DOES THE NOTICE REFERENCE SOME ITEMS OF INTEREST INCOME THAT WERE, ACCORDING TO THE I.R.S., LEFT OFF OF THE DEFENDANT'S 2007 TAX RETURN?

A. YES.

Q. AND IF YOU GO TO PAGE 7 OF 14, ARE THERE TWO MORE ITEMS OF INTEREST INCOME LISTED THERE?

A. YES.

Q. IF YOU CAN GO TO GOVERNMENT'S EXHIBIT 151, PLEASE.

A. OKAY.

Q. IS THIS ANOTHER NOTICE AS PART OF THE 2007 AUDIT?

A. YES. THIS ONE IS DATED APRIL 13TH, 2009.

Q. AND, AGAIN, FLIPPING THROUGH THIS, ARE THERE MORE REFERENCES TO UNREPORTED INTEREST INCOME?

A. TWO THERE, TWO THERE. YES.

Q. AND IF YOU GO TO PAGE 17 OF 18, PLEASE.

A. OKAY.

Q. HOW MUCH INTEREST WAS SHOWN ON THE DEFENDANT'S 2007 REPORT?

A. 20,125.

Q. AND AS PART OF THIS AUDIT, HOW MUCH IS THE I.R.S. TELLING THE DESAIS THAT WERE MISSING FROM THEIR RETURN?

A. IT SHOWS A DIFFERENCE OF \$51,639.

Q. AND DID THE DESAIS OWE ADDITIONAL MONEY TO THE I.R.S. AS A RESULT OF -- WELL, AS A RESULT OF THIS AUDIT?

A. YES.

Q. AND IF YOU COULD GO TO PAGE -- EXHIBIT 152.

A. OKAY.

Q. IS THIS YET ANOTHER NOTICE FROM THE I.R.S. REPORTING 2007?

A. YES, DATED NOVEMBER 30, 2009.

Q. AND DOES IT ALSO REFERENCE INTEREST INCOME THAT WAS NOT REPORTED TO THE I.R.S. ON THE DESAIS'S RETURN FOR 2007?

A. YES, IT DOES.

Q. AND IF YOU COULD GO TO EXHIBIT 1667.

A. OKAY. THAT'S A TRANSCRIPT FOR 2007.

Q. AND ACCORDING TO THAT TRANSCRIPT, WHAT IS -- AS OF YESTERDAY, DO THE DESAIS OWE MONEY TO THE I.R.S. FOR 2 --

A. NO, THEY DON'T OWE ANYTHING.

Q. FOR 2007?

A. FOR 2007.

Q. DID THE CORRESPONDENCE AUDITS THAT WE JUST LOOKED AT FOR 2007, HAVE ANYTHING TO DO WITH INTEREST INCOME FOR HSBC INDIA?

A. NO, MA'AM.

Q. AND THE LAST NOTICE I WANT YOU TO LOOK AT IS GOVERNMENT'S EXHIBIT 153.

A. OKAY.

Q. IS THIS A NOTICE ISSUED TO THE DESAIS REGARDING THEIR 2008 TAXES?

A. YES, DATED SEPTEMBER 7, 2010.

Q. AND DOES IT ALSO INCLUDE ITEMS OF INTEREST INCOME THAT THE I.R.S. SAYS WERE MISSING FROM THEIR RETURN?

A. YES.

Q. IF YOU GO TO PAGE 13 OF 15, PLEASE.

A. OKAY.

Q. WHAT IS THE TOTAL AMOUNT OF INTEREST INCOME THAT THE I.R.S. SAYS WAS MISSING FROM THE DESAIS' 2008 TAX RETURN?

A. \$10,000.

Q. AND DID THEY OWE ADDITIONAL MONEY AS A RESULT OF THIS AUDIT?

A. \$6,776.

Q. AND IF YOU LOOK AT EXHIBIT 168.

A. THAT'S THEIR 2008 TRANSCRIPT.

Q. AND DID THEY PAY THAT MONEY THAT THE I.R.S. SAID THAT THEY OWED? IF YOU LOOK AT THE SECOND PAGE.

A. YES, THEY PAID IT.

Q. AND IS THEIR ACCOUNT BALANCE ZERO AS OF YESTERDAY?

A. YES.

Q. AND -- BUT DID THEIR CORRESPONDENCE OF THEIR 2008 RETURN
HAVE ANYTHING TO DO WITH HSBC INDIA?

A. NO.

Q. AND TO YOUR KNOWLEDGE HAVE THE DESAIS EVER BEEN AUDITED BY
THE I.R.S. WITH RESPECT TO INTEREST INCOME FOR HSBC INDIA?

A. NO.

Q. DID YOU ASSIST IN THE PREPARATION OF A TIMELINE THAT PUTS
THESE NOTICES IN CONTEXT WITH OTHER EVENTS THAT HAVE OCCURRED
IN THIS CASE?

A. YES, MA'AM.

Q. AND IF YOU COULD TURN TO EXHIBIT 157, PLEASE.

MR. SCHAINBAUM: COULD WE HAVE A SIDE-BAR?

THE COURT: YES.

(SIDE-BAR CONFERENCE ON THE RECORD.)

THE COURT: WE'RE AT SIDE-BAR WITH COUNSEL.

MR. SCHAINBAUM: THIS EXHIBIT IS A DISTORTION, AND
IT'S ALSO INACCURATE IN ITS DESCRIPTION OF A TIMELINE, BUT I
THINK IT'S HIGHLY PREJUDICIAL IF IT GOES TO THE JURY.

THE BEST EVIDENCE ARE THE EXHIBITS THEMSELVES INSTEAD OF
SORT OF ACCUMULATING THEM IN THIS KIND OF A FASHION.

THE COURT: LET ME ASK MS. SISKIND IF SHE'S SEEKING
INTRODUCTION OF THIS DOCUMENT?

MS. SISKIND: NO, YOUR HONOR.

MR. SCHAINBAUM: OKAY. SO EVEN DISPLAYING THIS KIND
OF A DOCUMENT, THE BEST EVIDENCE IS THE EXHIBITS THEMSELVES AND

1 NOT THIS WHAT IS CALLED A "SUMMARY" HEADED UP TIMELINE BECAUSE
2 IT COMINGLES DATES OF ACTIVITIES WITH HIGHLIGHTING WHEN
3 MR. DESAI ALLEGEDLY ACTIVATES THE HSBC INDIA ACCOUNT. IT MAKES
4 NO REFERENCE TO REPRESENTATIVE OFFICE. SO I THINK THE WHOLE
5 DOCUMENT IS A DISTORTION.

6 THE COURT: MS. SISKIND.

7 MS. SISKIND: YOUR HONOR, HE'S A SUMMARY WITNESS.
8 THIS IS SUMMARIZING DIFFERENT EXHIBITS THAT ARE NOW IN EVIDENCE
9 AND PUTTING THEM INTO CHRONOLOGICAL ORDER.

10 THE COURT: OKAY.

11 MR. SCHAINBAUM: THAT'S REALLY NOT A DESCRIPTION OF
12 WHAT THIS EXHIBIT IS. SURE THERE'S CHRONOLOGICAL DATES HERE,
13 BUT THEY'RE IN SUCH A MANNER AND SUCH A FORMAT THAT CREATE A
14 DISTORTION.

15 THE COURT: OKAY. ALL RIGHT. THANK YOU. I'M GOING
16 TO ALLOW THE WITNESS TO USE THIS TO TESTIFY. I WON'T ALLOW
17 THIS OR PERMIT IT TO BE ADMITTED. I'VE BEEN TOLD IT'S NOT
18 GOING TO BE SOUGHT FOR ADMISSION.

19 THE WITNESS CAN USE THIS, AND IT CAN BE DISPLAYED TO THE
20 JURY WHILE THE WITNESS TESTIFIES TO EXPLAIN HIS INVESTIGATION.

21 DO WE HAVE THE MOST ACCURATE COPY?

22 MS. SISKIND: NO. THEY DO. IT SEEMS THAT YOU
23 DON'T.

24 THE COURT: ALL RIGHT.

25 MS. SISKIND: I THOUGHT MS. LANE PUT IT IN YOUR

DIRECT CERTEL

1 BINDERS THIS MORNING.

2 THE COURT: OKAY. IF YOU HAVE AN EXTRA COPY, I
3 WOULD APPRECIATE IT.

4 MS. SISKIND: BUT THEY HAVE THE MOST --

5 MR. SCHAINBAUM: MR. ALLEN JUST POINTS OUT NONE OF
6 THIS REPORTED INTEREST INCOME. THIS IS WITH RESPECT TO INCOME
7 THAT WAS AT THE MOST UNDERREPORTED. THERE'S BEEN A DESCRIPTION
8 OF UNREPORTED, AND WHICH I THINK IS AN ULTIMATE FACT FOR THE
9 JURY. TO PUT THIS IN HERE JUST EMPHASIZES IN A DISTORTED
10 MANNER AND PREJUDICES THE DEFENDANT.

11 IT'S NOT FAIR. IF YOU WANT TO PUT DOWN A LETTER FROM THE
12 I.R.S. REGARDING INTEREST INCOME AND IN THIS SUMMARY, THAT'S
13 ONE THING, BUT EVEN THAT WOULD BE AN OBJECTION BY ME --
14 OBJECTIONABLE, I MEAN.

15 MS. SISKIND: YOUR HONOR, THE WITNESS TESTIFIED THAT
16 THE NOTICES ENUMERATED ITEMS OF INCOME THAT WERE NOT REPORTED
17 ON THE DEFENDANT'S TAX RETURN AND NOT REPORTED BEING THE SAME
18 THING AS UNREPORTED.

19 THE COURT: SO I SEE THE CHART HAS THE WORDS
20 UNREPORTED INTEREST INCOME.

21 MS. SISKIND: AND WE MADE THAT CHANGE AFTER THE
22 REDACTIONS LAST NIGHT BECAUSE THAT IS THE ONLY TYPE OF INCOME
23 THAT THE JURY SEES ON THEM. SO --

24 THE COURT: I WANT TO NOTE YOUR OBJECTIONS, AND I'LL
25 PERMIT THE GOVERNMENT TO USE THAT FOR THAT PURPOSE.

MS. SISKIND: DOES YOUR HONOR NEED MY COPY? THE
ONLY CHANGE IS TO ADD --

THE COURT: NO, THAT'S FINE. THANK YOU, COUNSEL.
(END OF DISCUSSION AT SIDE-BAR.)

THE COURT: AS TO 157, MR. SCHAINBAUM, YOU HAVE AN
OBJECTION TO THIS. I'LL NOTE YOUR OBJECTION, SIR, AND I'LL
PERMIT -- I'LL OVERRULE THE OBJECTION.

MR. SCHAINBAUM: THANK YOU.

THE COURT: YOU'RE WELCOME. THE GOVERNMENT IS
PERMITTED TO EXAMINE ON THIS EXHIBIT.

BY MS. SISKIND:

Q. MR. OERTEL, MY QUESTION BEFORE MR. SCHAINBAUM OBJECTED WAS
WHETHER YOU ASSISTED IN THE PREPARATION OF A TIMELINE THAT PUTS
THESE AUDIT NOTICES IN CONTEXT WITH OTHER EVENTS IN THIS CASE?

A. THAT'S CORRECT.

Q. AND IS THAT TIMELINE CONTAINED IN GOVERNMENT'S
EXHIBIT 157?

A. YES, MA'AM.

MS. SISKIND: YOUR HONOR, MAY I DISPLAY IT FOR
DEMONSTRATIVE PURPOSES?

THE COURT: YES.

BY MS. SISKIND:

Q. WHAT APPEARS ON THE RIGHT-HAND SIDE OF THIS TIMELINE?

A. THESE ARE THE LETTERS FROM THE -- ON THE RIGHT SIDE IT'S
THE LETTERS FROM THE I.R.S. ABOUT UNREPORTED INTEREST INCOME.

Q. AND ARE THOSE THE LETTERS IN EXHIBITS 143 THROUGH 153?

A. YES, MA'AM.

Q. AND ON THE LEFT-HAND SIDE ARE THERE REFERENCES TO THE DATES OF OTHER EXHIBITS THAT WE HAVE SEEN DURING THIS TRIAL?

A. YES, MA'AM.

Q. AND SO STARTING AT THE TOP, WHAT HAPPENED ON MARCH 28TH, 2005?

A. THERE'S A LETTER FROM THE I.R.S. REGARDING UNREPORTED INTEREST INCOME FOR 2003.

Q. AND THEN WHAT HAPPENED A LITTLE UNDER THREE MONTHS LATER ON JUNE 13TH, 2005?

A. THERE'S A LETTER FROM THE I.R.S. REGARDING UNREPORTED INTEREST INCOME FOR 2003.

Q. AND AFTER THE I.R.S. SENT OUT THESE TWO NOTICES IN EXHIBITS 143 AND 144, WHAT HAPPENED ON JULY 17TH, 2006?

A. DESAI REACTIVATED HIS HSBC INDIA ACCOUNT AND IT ENDS IN 3679.

Q. AND IS THAT THE TRANSACTION THAT IS REFERENCED IN EXHIBIT 28?

A. YES, MA'AM.

Q. AND ABOUT THREE MONTHS LATER WAS THERE ANOTHER NOTICE?

A. YEAH, THERE WAS A LETTER FROM THE I.R.S. REGARDING UNREPORTED INTEREST INCOME FOR 2004.

Q. AND THAT WAS ON OCTOBER 30TH, 2006?

A. YES, MA'AM.

Q. AND WHAT HAPPENED ON MAY 29TH, 2007?

A. THERE'S A LETTER FROM THE I.R.S. REGARDING UNREPORTED INTEREST INCOME FOR 2007.

Q. AND SEPTEMBER 17TH, 2007?

A. A LETTER FROM I.R.S. REGARDING UNREPORTED INTEREST INCOME FOR 2005.

Q. AND HOW ABOUT ON MARCH 17TH, 2008?

A. A LETTER FROM I.R.S. REGARDING UNREPORTED INTEREST INCOME FOR 2006.

Q. AND A LITTLE LESS THAN A MONTH LATER ON APRIL 12TH, 2008, WHAT HAPPENED?

A. DESAI SIGNED HIS 2007 FORM 1040.

Q. AND IS THAT EXHIBIT 1?

A. YES, MA'AM.

Q. WHAT HAPPENED ON JUNE 2ND, 2008?

A. THERE'S A LETTER FROM THE I.R.S. REGARDING UNREPORTED INTEREST INCOME FOR 2006.

Q. AND HOW ABOUT ON FEBRUARY 2ND, 2009?

A. A LETTER FROM THE I.R.S. REGARDING UNREPORTED INTEREST INCOME FOR 2007.

Q. AND HOW ABOUT APRIL 13TH, 2009?

A. LETTER FROM THE I.R.S. REGARDING UNREPORTED INTEREST INCOME FOR 2007.

Q. AND WHAT HAPPENED TWO DAYS LATER?

A. DESAI SIGNED HIS 2008 FORM 1040.

Q. AND THAT WAS THE FORM 1040 THAT OMITTED INTEREST INCOME FROM HSBC INDIA?

A. YES, MA'AM.

Q. AND WHAT HAPPENED ON NOVEMBER 30TH, 2009?

A. LETTER FROM THE I.R.S. REGARDING UNREPORTED INTEREST INCOME FOR 2007.

Q. AND WHAT HAPPENED ON APRIL 5TH, 2010?

A. DESAI SIGNED HIS 2009 FORM 1040, WHICH IS EXHIBIT 3.

Q. AND IS THAT THE ONE THAT ACCORDING TO YOUR TESTIMONY WAS MISSING INTEREST INCOME FROM HSBC INDIA?

A. THAT'S RIGHT.

Q. AND, FINALLY, WHAT HAPPENED ON SEPTEMBER 7TH, 2010?

A. A LETTER FROM THE I.R.S. REGARDING UNREPORTED INTEREST INCOME FOR 2008.

MS. SISKIND: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: CROSS-EXAMINATION?

CROSS-EXAMINATION

BY MR. SCHAINBAUM:

Q. GOOD MORNING, MR. OERTEL.

A. GOOD MORNING.

Q. MY NAME IS MARTIN A. SCHAINBAUM, AND YOU PROBABLY ALREADY KNOW THAT SINCE BEING IN THE COURTROOM SINCE THE BEGINNING OF TRIAL?

A. CORRECT.

Q. NOW, AS I UNDERSTAND IT, YOU HAVE BEEN AN INTERNAL REVENUE

AGENT FOR HOW MANY YEARS?

A. TWENTY-SEVEN YEARS.

Q. AND AS I UNDERSTAND IT, IN THAT PERIOD OF TIME YOU HAVE CONDUCTED FIELD AUDITS?

A. THAT'S RIGHT.

Q. AND DO YOU WANT TO EXPLAIN WHAT A FIELD AUDIT IS?

A. A FIELD AUDIT IS WHERE THE AGENT CAN GO OUT TO THE TAXPAYER'S PLACE OF BUSINESS OR TO THEIR REPRESENTATIVE OFFICE, REPRESENTATIVE BEING USUALLY AN ATTORNEY OR ACCOUNTANT, AND LOOK AT THE RECORDS THERE, AS WELL AS CONDUCT THE INTERVIEW THERE.

Q. AND DURING THOSE 27 YEARS, HAVE YOU BECOME FAMILIAR WITH SOMETHING CALLED THE INTERNAL REVENUE MANUAL?

A. YES.

Q. AND COULD YOU TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT THAT IS?

A. THE INTERNAL REVENUE MANUAL IS A SET OF PROCEDURES THAT THE EMPLOYEES OF THE I.R.S. USE TO CONDUCT THEIR WORK.

Q. AND WHEN YOU SAY "IT'S A SET OF PROCEDURES THAT THE INTERNAL REVENUE AGENTS USE TO CONDUCT THEIR WORK," IS IT REALLY A GUIDE TO HOW TO DO AUDITS AND OTHER INTERNAL REVENUE PROCEDURES?

A. WELL, YOU SAID I.R.S. AGENTS. IT ACTUALLY INVOLVES ALL I.R.S. EMPLOYEES BECAUSE THE INTERNAL REVENUE MANUAL TALKS ABOUT NOT JUST AUDITS BUT ALSO COLLECTION, PROCESSING, THE

CROSS EXAMINATION
1 WHOLE BIT.

2 Q. SO IT WOULD COVER YOUR CONDUCT AS A FIELD AGENT?

3 A. YES.

4 Q. IT WOULD COVER YOUR CONDUCT AS YOU SIT HERE IN THIS
5 COURTROOM UNDER OATH?

6 A. WELL, ACTUALLY MY CONDUCT IS UNDER OUR ETHICS RULES, BUT
7 THE INTERNAL REVENUE MANUAL IS MORE ABOUT THE PROCEDURES AND
8 STEPS THAT WE TAKE DURING THE COURSE OF OUR WORK.

9 Q. WELL, WHEN YOU ANSWERED QUESTIONS OF MS. SISKIND ABOUT THE
10 CORRESPONDENCE AUDITS AND OTHER PROCEDURES, DID YOU HAVE IN
11 MIND THE INTERNAL REVENUE MANUAL?

12 A. WELL, I FOLLOW THE INTERNAL REVENUE MANUAL.

13 Q. IN OTHER WORDS, YOU FOLLOW THE PROVISIONS OF THE INTERNAL
14 REVENUE MANUAL?

15 A. YES.

16 Q. AND WHATEVER THAT MANUAL STATES, YOU FOLLOW THE
17 GUIDELINES?

18 A. IF I'M AWARE OF THE PROCEDURES. THEY CHANGE OFTEN.

19 Q. AND HOW DO YOU KEEP UP TO DATE WITH THE CHANGES AND THE
20 PROCEDURES?

21 A. WELL, WE'RE GIVEN NOTICES OF CHANGES. USUALLY THE EASIEST
22 WAY TO FIND A CHANGE IS IF YOU'RE DOING A PARTICULAR THING, YOU
23 JUST LOOK IT UP ON THE I.R.S.'S INTERNAL WEBSITE UNDER WHATEVER
24 SUBJECT THERE IS AND YOU FOLLOW THE PROCEDURES THAT YOU FIND.

25 Q. NOW, IF YOU WOULD BE KIND ENOUGH TO TURN TO THE

DEFENDANT'S EXHIBIT BOOK, THERE'S AN EXHIBIT CALLED GG-1. DO
YOU HAVE THAT BEFORE YOU? THAT'S THE LETTER GG-1?

A. YEAH, I WAS LOOKING AT G. I'M SORRY.

Q. THAT'S ALL RIGHT. TAKE YOUR TIME.

A. OKAY.

Q. YOU HAVE THAT; CORRECT?

A. YES.

Q. AND CAN YOU IDENTIFY THAT DOCUMENT?

A. THIS IS AN E-MAIL FROM ME TO THE SPECIAL AGENT IN THIS
CASE MICHAEL HELGESEN.

Q. AND WHO IS SITTING RIGHT HERE, CORRECT (INDICATING)?

A. THAT'S RIGHT.

Q. AND WHAT IS THE DATE OF THE E-MAIL?

A. JUNE 6TH, 2012.

MR. SCHAINBAUM: I MOVE EXHIBIT GG-1 INTO EVIDENCE.

MS. SISKIND: OBJECTION, HEARSAY.

MR. SCHAINBAUM: YOUR HONOR, THE AUTHOR OF THE
E-MAIL --

THE COURT: EXCUSE ME. IS THIS TRIPLE G OR DOUBLE
G? I'M SORRY.

MR. SCHAINBAUM: DOUBLE G.

MS. SISKIND: AND THERE'S A RELEVANCE OBJECTION AS
WELL, YOUR HONOR.

THE COURT: GG-1 DID YOU SAY?

MR. SCHAINBAUM: YES, GG-1.

1 THE COURT: ALL RIGHT. LET ME SEE COUNSEL, PLEASE,
2 AT SIDE-BAR.

3 (SIDE-BAR CONFERENCE ON THE RECORD.)

4 THE COURT: ALL RIGHT. WE'RE AT SIDE-BAR AND YOU'RE
5 ASKING THAT GG-1 BE ADMITTED. THERE'S A HEARSAY OBJECTION?

6 MS. SISKIND: HEARSAY AND RELEVANCE. I'LL START
7 WITH THE HEARSAY OBJECTION. THIS IS AN OUT-OF-COURT STATEMENT
8 BY THE WITNESS.

9 THE FOUNDATION THAT MR. SCHAINBAUM BEGAN TO LAY HAS TO DO
10 WITH HOW HE CONDUCTS VARIOUS PROCEDURES AND THIS DISCUSSES SOME
11 ACTIONS HE TOOK. SO I SEE NO OTHER WAY TO CONSTRUE THIS OTHER
12 THAN IT'S BEING OFFERED FOR THE MATTER ASSERTED AS TO WHAT
13 ACTIONS HE TOOK.

14 BUT THERE IS ALSO A RELEVANCE OBJECTION. IF THE COURT
15 READS THIS, IT'S TALKING ABOUT METHODS OF CALCULATING TAX.
16 THE -- SO IT'S IRRELEVANT BECAUSE THIS WITNESS HAS NOT BEEN
17 CALLED UPON TO -- TWO THINGS.

18 IT'S BEYOND THE SCOPE OF DIRECT BECAUSE DIRECT EXAMINATION
19 DID NOT INCLUDE ANY CALCULATION OF TAX DUE. IT WAS A
20 CALCULATION OF INCOME AND HOW TO BALANCE.

21 ALSO, THIS IS NOT A TAX EVASION CASE. SO TAX DUE AND
22 OWING IS NOT AN ELEMENT THAT THE GOVERNMENT MUST PROVE. IN
23 FACT, I BELIEVE THERE MAY EVEN BE A JURY INSTRUCTION ON THIS
24 THAT THE JURY IS NOT TO CONSIDER THE BOTTOM LINE OF HOW MUCH
25 ADDITIONAL TAX WOULD BE OWED.

1 SO THIS RELATES DIRECTLY TO THE CALCULATION OF TAX. IT'S
2 AN OUT-OF-COURT STATEMENT BY THE WITNESS, AND IT'S BEYOND THE
3 SCOPE OF DIRECT.

4 THE COURT: MR. SCHAINBAUM.

5 MR. SCHAINBAUM: THIS RELATES TO TWO OF THE
6 THREE YEARS THAT ARE INVOLVED. THIS RELATES TO NOT ONLY
7 WHETHER THERE IS ANY KIND OF CORRECTNESS OF TAX RETURN, WHICH
8 INCLUDES CALCULATION OF A TAX, BUT ADDITIONALLY THIS RELATES TO
9 WILLFULNESS BECAUSE HERE'S THE AGENT WRITING TO ANOTHER AGENT
10 AND POINTING OUT WHAT THE TAXPAYER FAILED TO DO AND WHAT HE
11 FORGOT TO DO.

12 SO THIS GOES -- BEARS ON WILLFULNESS. AND UNDER CHEEK,
13 THE DEFENSE CAN PUT IN ANY EVIDENCE WHICH MIGHT SHOW LACK OF
14 WILLFULNESS. AND YOU ALSO, BY THE WAY, WENT THROUGH A WHOLE
15 SERIES OF QUESTIONS BEFORE WE ENDED THE DIRECT EXAMINATION
16 WHERE WE WENT THROUGH HIM READING VARIOUS AUDIT AND EXPRESSING
17 HIS VIEWS ON CORRESPONDENCE AUDITS OR WHATEVER.

18 SO ALL I'M TRYING TO DO HERE IS TO POINT OUT THAT THIS IS
19 WHAT HE DETERMINED AND SENT TO THE OTHER AGENT REGARDING THE
20 TAX POSITION OF THE DEFENDANT AND WHETHER THE GOVERNMENT HAS TO
21 PROVE ADDITIONAL TAX.

22 AND THAT'S NOT THE ASPECT. ONE ASPECT OF A FALSE RETURN
23 IS THAT IT DOESN'T HAVE THE CORRECT TAX, BUT THEY DON'T HAVE TO
24 PROVE WHAT THE CORRECT TAX IS.

25 BUT WHEN YOU TAKE IT ALL TOGETHER, IT BEARS ON HIS

CROSS EXAMINATION

1 WILLFULNESS, AND THIS IS AN INDEPENDENT DETERMINATION.

2 ON THE HEARSAY, THIS WITNESS IS THE AUTHOR OF THIS
3 DOCUMENT. SO HE'S IN COURT AND CAN BE CROSS-EXAMINED ABOUT
4 WHAT HE WAS THE AUTHOR OF.

5 THE COURT: IT'S TECHNICALLY STILL A HEARSAY
6 DOCUMENT. BUT AS TO CHEEK, THE THRESHOLD IS THAT THE EVIDENCE
7 HAS TO BE ADMISSIBLE BEFORE IT CAN BE ADMITTED. THE CHEEK CASE
8 DOESN'T DO AWAY WITH ANY OF THE FEDERAL EVIDENCE.

9 MR. SCHAINBAUM: I AGREE. BUT, I MEAN, ANYTHING
10 THAT INTENDS TO ESTABLISH A FACT IS RELEVANT WHEN IT COMES TO
11 THE MAIN ISSUE OF WILLFULNESS.

12 AND IN THIS CASE THIS COMES UPON THE MAIN ISSUE OF
13 WILLFULNESS, AMONG OTHER ISSUES.

14 THE COURT: WELL, THIS SPEAKS TO INCOME TAX, AND I'M
15 NOT SURE THE EVIDENCE HERE IS -- I UNDERSTAND THE GLOBAL ISSUE
16 IS THE INCOME TAX, BUT HERE IT WAS UNREPORTED INCOME.

17 MS. SISKIND.

18 MS. SISKIND: YOUR HONOR, THE INDICTMENT CHARGES TWO
19 SPECIFIC ITEMS ON THE RETURN AS BEING FALSE: ONE IS THE
20 DEFENDANT'S FAILURE TO REPORT INTEREST INCOME; AND, TWO, THE
21 FAILURE TO CHECK THE BOX IN THE FOREIGN BANK ACCOUNT QUESTION.

22 WE DIDN'T ALLEGE THE TAX DUE TO BE FALSE. SO WE HAVE PUT
23 NO EVIDENCE BEFORE THE JURY SO FAR ABOUT THE BOTTOM LINE TAX
24 CALCULATION FROM THIS WITNESS AND NOR WOULD WE DO SO BECAUSE IT
25 WOULD BE IRRELEVANT TO ELICIT SUCH A CALCULATION FROM THIS

1 WITNESS.

2 AND MR. SCHAINBAUM IS AWARE HE HAD DONE THE CALCULATION
3 BECAUSE THIS CASE WAS ORIGINALLY CHARGED AS TAX EVASION. BUT
4 AFTER WE SUPERSEDED AND SAID FILING FALSE TAX RETURNS, THAT WAS
5 IRRELEVANT WHAT --

6 MR. SCHAINBAUM: BUT THAT'S WHAT THIS IS ALL ABOUT.
7 THIS IS ABOUT HIS -- IT'S A COURSE OF CONDUCT IN PREPARING TAX
8 RETURNS WHICH THEY SAY IS FALSE.

9 ONE ASPECT OF THAT IS DID HE INTENTIONALLY PREPARE A
10 RETURN OR WAS HE NEGLIGENT OR CARELESS OR INADVERTENT OR
11 WHATEVER?

12 THE COURT: THIS DOESN'T SHOW THAT. IT DOESN'T SHOW
13 NEGLIGENCE, CARELESSNESS OR INADVERTENCE.

14 MR. SCHAINBAUM: THIS SHOWS THAT THE TAXPAYER FAILED
15 TO USE THE CORRECT METHOD, WHICH MEANS THAT THIS AGENT, WHO HAS
16 ALREADY TESTIFIED ABOUT A WHOLE SERIES OF SO-CALLED
17 "CORRESPONDENCE NOTICES," MADE HIS OWN INDEPENDENT USE OF
18 THE --

19 THE COURT: EXCUSE ME. DID THIS WITNESS DO AN
20 ANALYSIS OF THE DEFENDANT'S TAX RETURNS?

21 MR. SCHAINBAUM: YES, HE DID.

22 MS. SISKIND: YES. INITIALLY WE CHARGED THE CASE AS
23 TAX EVASION, AND WE WERE GOING TO NEED HIM TO COME IN AND PROVE
24 THAT THERE WAS A SUBSTANTIAL TAX DUE AND OWING.

25 THE COURT: SO, MS. SISKIND, SHOULDN'T THIS WITNESS

1 BE PERMITTED TO AT LEAST TESTIFY THAT HE LOOKED AT TAX --
2 PERHAPS NOT THIS.

3 MS. SISKIND: THERE'S STILL THE HEARSAY PROBLEM.

4 THE COURT: I UNDERSTAND. BUT TO TESTIFY THAT HE
5 DID RESEARCH ON THE DEFENDANT'S TAX RETURNS AND FOUND THAT THE
6 DEFENDANT HAD IN SOME CIRCUMSTANCES MADE ERRORS IN HIS -- THE
7 DEFENDANT'S CALCULATIONS ON THE TAX RETURNS.

8 MS. SISKIND: I THINK THAT WOULD BE FAIR, BUT THE
9 DOCUMENT WOULD STILL BE HEARSAY.

10 THE COURT: RIGHT, I UNDERSTAND THAT.

11 SO WHAT I'M SAYING, MR. SISKIND -- THERE I GO AGAIN. I'M
12 SORRY.

13 MR. KENNEDY: THAT'S ALL RIGHT. IT'S
14 MR. SCHAINBAUM.

15 THE COURT: I THINK IT'S FAIR FOR YOU TO ASK HIM
16 WHAT WORK HE DID ON YOUR CLIENT'S TAX RETURNS, AND YOU CAN
17 CERTAINLY ELICIT TESTIMONY IF HE, THIS WITNESS, DETERMINED THAT
18 THE TAXPAYER FAILED TO FILL OUT THE FORM ACCURATELY IN THE 2009
19 RETURN, THAT HE FAILED TO GIVE HIMSELF A CREDIT, AND THAT HE
20 WAS DUE.

21 I'LL SUSTAIN THE OBJECTION TO THE HEARSAY OF THIS
22 DOCUMENT, BUT I THINK YOU'RE PERMITTED TO INQUIRE ABOUT WHAT
23 HE, WHEN HE, THIS WITNESS, REVIEWED THE TAX RETURN AND BECAUSE
24 OF HIS EXPERIENCE, HIS DETERMINATION ABOUT THE FAILURE OF THE
25 TAXPAYER TO USE CORRECT CALCULATION METHODS IN THOSE ANALYSIS

CROSS EXAMINATION

1 AND THAT'S IT. THAT'S IT. WE DON'T NEED TO GET INTO THE
2 AMOUNTS AND WE DON'T NEED -- IN FACT, THE ISSUE FOR YOU IS, AS
3 I UNDERSTAND IT, AND I THINK IT'S APPROPRIATE, IS THAT HE
4 DETERMINED THAT THE TAXPAYER FAILED TO ACCURATELY PREPARE THE
5 RETURN. THERE WERE ERRORS IN THE RETURNS, IN THE TAXPAYER
6 RETURNS.

7 AND I DON'T RECALL WHETHER OR NOT THESE WERE -- I THINK
8 THESE WERE YEARS THAT HE SIGNED AND HE PREPARED THE RETURNS.

9 MR. SCHAINBAUM: HE PREPARED ALL OF THE RETURNS SO
10 IT'S HIGHLY RELEVANT.

11 THE COURT: SO I'LL ALLOW YOU TO EXAMINE AS TO THAT,
12 BUT NOT AS TO THE ADMISSIBILITY OF THE DOCUMENT ITSELF.

13 MR. SCHAINBAUM: WELL, TO THAT THEN I OBJECT TO THE
14 RULING THAT I CANNOT PUT THIS DOCUMENT INTO EVIDENCE.

15 THE COURT: OKAY.

16 MR. SCHAINBAUM: BECAUSE I THINK, ONE, IT'S A
17 DOCUMENT FROM THE WITNESS WHO IS ON THE STAND AND HE'S SUBJECT
18 TO REDIRECT OR CROSS-EXAMINATION; AND HE'S THE AUTHOR OF THE
19 DOCUMENT; AND THE DOCUMENT IS HIS STATEMENT AS TO WHAT HE
20 BELIEVED -- WHAT HE BELIEVED TO BE THE TRUTH OF THE MATTER AS A
21 MATTER OF FACT.

22 THE COURT: OKAY. I'LL ALLOW YOU TO EXAMINE, AS I
23 INDICATED, AND I THINK IT'S APPROPRIATE TO ALLOW YOU TO EXAMINE
24 ABOUT HIS OBSERVATION OF YOUR CLIENT'S PREPARATIONS AND HE CAN
25 TESTIFY ABOUT THIS.

CROSS OERTEL

1 MR. ALLEN: IF A PROPER FOUNDATION WERE LAID, COULD
2 THIS DOCUMENT QUALIFY AS AN 803(6) BUSINESS RECORD?

3 THE COURT: I DON'T KNOW ANSWER TO THAT QUESTION.

4 MR. ALLEN: CAN AN ATTEMPT BE MADE?

5 THE COURT: IT'S UP TO YOU IF YOU CAN ATTEMPT TO
6 MAKE THAT. I'M NOT SURE A SINGLE E-MAIL --

7 MR. ALLEN: IN THE ORDINARY COURSE OF BUSINESS.

8 MR. SCHAINBAUM: YEAH, I COULD TRY TO LAY THE
9 FOUNDATION.

10 THE COURT: THERE'S NO HARM IN TRYING.

11 MR. SCHAINBAUM: NO, OF COURSE NOT.

12 THE COURT: OKAY. THANK YOU.

13 (END OF DISCUSSION AT SIDE-BAR.)

14 THE COURT: I'LL SUSTAIN THE OBJECTION.
15 MR. SCHAINBAUM.

16 MR. SCHAINBAUM: YES.

17 Q. MR. OERTEL, DID YOU SEND GG-1 MARKED FOR IDENTIFICATION IN
18 YOUR ORDINARY COURSE OF BUSINESS AS A REVENUE AGENT?

19 A. YES.

20 Q. AND DO YOU REGULARLY SEND E-MAILS IN THE REGULAR COURSE OF
21 YOUR BUSINESS AS A REVENUE AGENT?

22 A. YES.

23 Q. AND DO YOU RELY ON E-MAIL TRANSMISSIONS SUCH AS GG-1 IN
24 PERFORMING YOUR DUTIES?

25 A. YES.

1 Q. AND WITH RESPECT TO GG-1, DID YOU RELY ON IT WHEN YOU SENT
2 IT TO SPECIAL AGENT HELGESEN WITH RESPECT TO YOUR DUTIES ON OR
3 ABOUT JUNE 6TH, 2012?

4 A. YES.

5 MR. SCHAINBAUM: YOUR HONOR, I MOVE GG-1.

6 MS. SISKIND: OBJECTION, YOUR HONOR. IT'S AN
7 INSUFFICIENT 803(6) FOUNDATION AND IT ADDRESSES THIS WITNESS'S
8 USE OF THE E-MAIL BUT NOT THE E-MAIL RECORDKEEPING SYSTEM AT
9 THE I.R.S.

10 THE COURT: SUSTAINED AS TO THE FOUNDATION
11 OBJECTION.

12 BY MR. SCHAINBAUM:

13 Q. DO YOU USE -- GG-1, WHAT WAS THE PURPOSE OF SENDING THIS
14 E-MAIL?

15 A. IT WAS TO TELL THE SPECIAL AGENT SOME OF THE CALCULATIONS
16 THAT I HAD DONE.

17 Q. AND WAS THAT PART OF YOUR DUTIES IN THIS MATTER OF
18 MR. DESAI?

19 A. YES.

20 Q. SO DID YOU RELY ON ANY PART OF THIS E-MAIL KNOWN AS GG-1?

21 A. DID I RELY ON IT?

22 Q. YES.

23 A. I DIDN'T RELY ON IT. I DON'T KNOW WHAT THE SPECIAL AGENT
24 DID.

25 Q. BUT YOU SENT IT TO THE SPECIAL AGENT IN THE ORDINARY

CROSS EXAMINATION
1 REGULAR COURSE OF BUSINESS?

2 A. YES.

3 Q. AND WAS IT FOR THE PURPOSE OF POINTING OUT HOW MR. DESAI
4 FAILED TO USE METHODS IN CALCULATING HIS TAX?

5 A. YES.

6 Q. AND WAS IT FOR THE PURPOSE OF POINTING OUT TO THE SPECIAL
7 AGENT THAT THE TAXPAYER FORGOT TO TAKE THE WORK PAY CREDIT?

8 A. YES.

9 Q. AND DID YOU BELIEVE THAT BECAUSE OF THESE FORGETFULNESSES
10 OF --

11 MS. SISKIND: OBJECTION, YOUR HONOR, WHAT THE
12 WITNESS BELIEVED ABOUT FORGETFULNESS.

13 MR. SCHAINBAUM: I HAVEN'T FINISHED THE SENTENCE.

14 THE COURT: WHY DON'T YOU FINISH YOUR QUESTION AND
15 THEN I'LL HEAR THE OBJECTION.

16 MR. SCHAINBAUM: OKAY.

17 Q. BASED UPON WHAT YOU SAID THAT HE FAILED TO USE THE CORRECT
18 METHOD OF CALCULATING TAX AND FORGOT TO TAKE THE WORK PAY
19 CREDIT, DID YOU MAKE CHANGES THAT BENEFITTED THE TAXPAYER?

20 A. WHEN I WAS DOING SOME TAX CALCULATIONS, YES.

21 Q. I SEE. NOW, WITH RESPECT TO THIS E-MAIL, CAN YOU TELL US
22 IF THE I.R.S. HAS A POLICY AT THE -- TO USE E-MAILS TO CONDUCT
23 THEIR REGULAR AND ORDINARY COURSE OF BUSINESS?

24 A. YES.

25 Q. AND DID YOU USE THAT POLICY IN SENDING AND ISSUING THIS

E-MAIL DATED JUNE 6TH, 2012?

A. YES.

Q. AND IS THERE A SYSTEM IN PLACE AT THE I.R.S. AS TO
MAINTAINING AND TRANSMITTING E-MAILS?

A. YES.

Q. AND DO YOU RELY ON THAT SYSTEM?

A. YES.

Q. AND ARE E-MAILS MADE IN THE ORDINARY COURSE OF I.R.S.
BUSINESS AT OR NEAR THE TIME OF THE TRANSACTION?

MS. SISKIND: OBJECTION, BEYOND THE SCOPE OF THIS
WITNESS'S KNOWLEDGE ABOUT HOW E-MAILS GENERALLY ARE MAINTAINED
AT THE I.R.S.

THE COURT: SUSTAINED. IF YOU WANT TO REFINER YOUR
QUESTION.

BY MR. SCHAINBAUM:

Q. YEAH. DO YOU KNOW HOW E-MAILS ARE MAINTAINED AT THE
I.R.S.?

A. NO, I DON'T.

Q. AND DO YOU KNOW HOW YOU RECEIVE E-MAILS?

A. I HAVEN'T GOT A CLUE AS TO HOW THAT WORKS.

Q. DO YOU KNOW HOW YOU RECEIVE E-MAILS?

A. I RECEIVE E-MAILS. I SEND E-MAILS. HOW THE WHOLE SYSTEM
WORKS, I WILL HAVEN'T GOT A CLUE.

Q. SO -- BUT YOU DO FOLLOW THE POLICY OF THE I.R.S. IN
SENDING AND RECEIVING E-MAILS?

CROSS EXAMINATION

1 A. YES, I BELIEVE SO.

2 Q. AND WAS EXHIBIT GG-1 SENT WITHIN THAT POLICY?

3 A. YES.

4 Q. SO THERE'S NOTHING EXTRAORDINARY OUTSIDE OF THE ORDINARY
5 COURSE OF I.R.S. BUSINESS ABOUT THIS E-MAIL?

6 A. NO.

7 MR. SCHAINBAUM: I, AGAIN, MOVE THE ADMISSION OF
8 GG-1.

9 MS. SISKIND: OBJECTION, YOUR HONOR, THE WITNESS HAS
10 STATED THAT HE'S NOT FAMILIAR WITH HOW E-MAILS ARE RECEIVED IN
11 THE I.R.S. SYSTEM.

12 THE COURT: I THINK THAT THERE'S AN ELEMENT MISSING,
13 IT'S 6(A) OF THE CODE.

14 MR. SCHAINBAUM: I DON'T HAVE THAT. I THINK I HAVE
15 ASKED THIS QUESTION.

16 Q. WAS THIS E-MAIL, GG-1, MADE AT OR NEAR THE TIME THAT YOU
17 PUT THE INFORMATION ON THE E-MAIL?

18 A. YES, I BELIEVE SO.

19 Q. AND YOU DID HAVE KNOWLEDGE ABOUT THE INFORMATION THAT YOU
20 PUT ON THIS E-MAIL?

21 A. YES.

22 Q. AND IT WAS PUT ON THERE CONTEMPORANEOUSLY AT THE TIME THAT
23 YOU TRANSMITTED IT TO MR. HELGESEN?

24 A. YES.

25 Q. AND YOU RELIED ON IT?

1 A. WELL, AGAIN, I -- I MEAN, WHAT DO YOU MEAN THAT I RELIED
2 ON IT?

3 Q. I MEAN, YOU RELIED ON THE INFORMATION THAT YOU PUT ON THE
4 E-MAIL THAT IT WAS CORRECT?

5 A. WELL, I BELIEVE IT WAS CORRECT, YES.

6 Q. AND YOU BELIEVE IT WAS TRUE AND CORRECT?

7 A. WELL, YES.

8 Q. AND YOU'RE THE AUTHOR OF THE E-MAIL?

9 A. YES.

10 MR. SCHAINBAUM: ALL RIGHT. I MOVE FOR ADMISSION.

11 MS. SISKIND: YOUR HONOR, THERE'S STILL A PROBLEM
12 UNDER 803(6) (B) UNLESS THIS WITNESS IS FAMILIAR WITH HOW THE
13 I.R.S. SERVER WORKS AND CAN SAY HOW THE E-MAILS ARE KEPT AT THE
14 I.R.S. IN THE ORDINARY COURSE OF BUSINESS.

15 THE COURT: DO YOU WANT TO ASK THAT QUESTION?

16 MR. SCHAINBAUM: SURE.

17 Q. WHEN YOU TRANSMITTED THIS E-MAIL, DID YOU RETAIN THIS
18 E-MAIL?

19 A. I DON'T REMEMBER.

20 Q. WELL, IN THE ORDINARY COURSE OF YOUR BUSINESS AS A REVENUE
21 AGENT, DO YOU RETAIN E-MAILS?

22 A. DO I RETAIN THEM? WELL, I DON'T SAVE THEM TO MY COMPUTER,
23 USUALLY NOT.

24 Q. AND WHAT IS THE POLICY OF THE I.R.S.?

25 A. ABOUT SAVING E-MAILS?

Q. ABOUT SAVING E-MAILS, YES.

A. I DON'T KNOW.

Q. SO DID YOU MAKE A RECORD OF THE E-MAIL?

A. WHAT KIND OF RECORD?

Q. DID YOU PRINT OUT THE E-MAIL?

A. I DON'T REMEMBER.

Q. YOU DON'T REMEMBER?

A. I DON'T REMEMBER.

Q. BUT YOU REMEMBER THAT THIS IS A TRUE AND ACCURATE COPY OF
THE E-MAIL THAT YOU PREPARED AND AUTHORED?

A. IT CERTAINLY LOOKS LIKE IT.

Q. AND IN THE NORMAL COURSE OF YOUR DUTIES HERE AS A REVENUE
AGENT FOR THE GOVERNMENT, DID YOU COLLECT INFORMATION AND PUT
IT IN A FILE OR OTHER RECORDKEEPING PLACE SO THAT YOU COULD
UTILIZE IT AT A SUBSEQUENT TIME?

A. I DON'T REALLY -- I'M NOT -- WHAT DO YOU MEAN?

Q. WHAT I MEAN IS THAT WHEN YOU HAVE PROVIDED INFORMATION TO
THE GOVERNMENT ATTORNEYS, DID YOU KEEP A RECORD OF IT?

A. AS FAR AS I KNOW, YEAH.

Q. AND HOW DID YOU DO THAT?

A. JUST SET IT ASIDE IN A FOLDER.

Q. AND DID YOU SET ASIDE E-MAILS IN THAT FOLDER?

A. I DON'T REMEMBER. I DON'T KNOW. YOU KNOW, YOU DO A LOT
OF STUFF WHENEVER YOU'RE WORKING ON A TRIAL, AND YOU CAN'T
REMEMBER IF YOU PRINTED SOMETHING OUT OR IF IT'S ON THE

CROSS OERTEL

1 COMPUTER OR IF IT'S MAYBE SOME SERVER HAS IT.

2 I REALLY DON'T KNOW. I DON'T KNOW EXACTLY WHAT YOU MEAN.

3 Q. I MEAN, IS THERE A POLICY AT THE I.R.S. THAT ANY PART OF
4 YOUR WORK, WORK PRODUCT IS KEPT AND MAINTAINED IN THE REGULAR
5 COURSE IN SOME FILE OR OTHER RECEPTACLE THAT WOULD MAKE IT PART
6 OF YOUR -- THE OFFICIAL RECORDS OF THE I.R.S.?

7 A. YES.

8 Q. AND WAS THIS EXHIBIT GG-1 PART OF THE OFFICIAL FILES OF
9 THE I.R.S.?

10 A. UM, I WOULD THINK SO.

11 MR. SCHAINBAUM: YOUR HONOR, I MOVE EXHIBIT GG-1 IN.

12 MS. SISKIND: YOUR HONOR, WE STILL HAVE AN ISSUE
13 WITH SAYING THAT THIS WAS KEPT AS AN E-MAIL IN THE ORDINARY
14 COURSE OF BUSINESS. UNLIKE A PREVIOUS RECORDS CUSTODIAN THAT
15 THE GOVERNMENT CALLED WHO COULD SPEAK HOW THE COMPUTER SERVER
16 WORKS, THAT'S NOT THE TESTIMONY THAT WE HAVE HERE.

17 THE COURT: THANK YOU. I THINK THERE'S BEEN A
18 SUFFICIENT RECORD. I'LL ADMIT IT OVER OBJECTION.

19 MR. SCHAINBAUM: THANK YOU, YOUR HONOR.

20 THE COURT: YOU'RE WELCOME.

21 (DEFENDANT'S EXHIBIT GG-1 WAS RECEIVED IN EVIDENCE.)

22 MR. SCHAINBAUM: THANK YOU, YOUR HONOR.

23 Q. NOW, MR. OERTEL, WOULD YOU BE KIND ENOUGH TO READ WHAT YOU
24 AUTHORED AND SENT TO SPECIAL AGENT HELGESEN?

25 A. SURE. "HI MIKE, HERE IS THE RAR FOR DESAI. BEFORE YOU

1 LOOK AT IT, I NEED TO LET YOU KNOW THAT THE TAX REPORTED ON THE
2 ORIGINAL RETURNS WAS NOT CORRECT. IT WAS CHANGED BY THE
3 SERVICE CENTER. ON BOTH THE 2007 AND 2008 RETURNS, THE
4 TAXPAYER FAILED TO USE THE CORRECT METHOD OF CALCULATING TAX
5 WHEN YOU RECEIVE A LARGE AMOUNT OF QUALIFIED DIVIDENDS."

6 Q. CAN YOU STOP FOR A SECOND. I WANT TO INTERRUPT YOU, AND I
7 APOLOGIZE FOR THAT.

8 BUT I'M CURIOUS WHAT THE BASIS OF YOUR STATEMENT THAT "ON
9 BOTH THE 2007 AND 2008 RETURNS THE TAXPAYER FAILED TO USE THE
10 CORRECT METHOD OF CALCULATING TAX WHEN YOU RECEIVE A LARGE
11 AMOUNT OF QUALIFIED DIVIDENDS"?

12 A. WHAT DID I MEAN BY THAT?

13 Q. YES.

14 A. WELL, IT MEANS THAT WHENEVER I LOOKED AT THE TAX RETURN, I
15 REVIEWED IT AND IT APPEARED TO ME THAT HE DIDN'T DO THAT RIGHT.

16 Q. WHAT DO YOU MEAN "IT APPEARED TO YOU THAT HE DIDN'T DO
17 THAT RIGHT"? WHAT DOES THAT MEAN?

18 A. WELL, THERE'S A WAY OF CALCULATING CERTAIN TYPES OF TAX,
19 CERTAIN TYPES OF INCOME, AND IT APPEARED TO ME THAT, THAT
20 WASN'T DONE CORRECTLY.

21 Q. WHEN YOU SAY IT WASN'T DONE CORRECTLY, COULD YOU BE MORE
22 PRECISE?

23 A. IT WASN'T ACCURATE.

24 Q. AND IN WHAT MANNER?

25 A. THE WAY HE CALCULATED THE TAX.

Q. IN OTHER WORDS, DID HE USE THE WRONG METHOD?

A. THAT'S WHAT I BELIEVE, YEAH.

Q. OKAY. SO --

THE COURT: BEFORE YOU GO ON, WHY DON'T WE TAKE OUR
NOON RECESS AT THIS TIME.

MR. SCHAINBAUM: THANK YOU.

THE COURT: YOU'RE WELCOME. WE'LL TAKE OUR NOON
RECESS, LADIES AND GENTLEMEN. WE'LL RESUME AT 1:30, 1:30 AND
WE'LL SEE YOU THEN.

(LUNCH RECESS TAKEN.)

AFTERNOON SESSION

(JURY IN AT 1:35 P.M.)

THE COURT: WE'RE BACK IN SESSION ON THE DESAI
MATTER. ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT ONCE AGAIN.
OUR JURY AND ALTERNATES ARE PRESENT.

WOULD YOU LIKE TO CONTINUE WITH YOUR CROSS-EXAMINATION?

MR. SCHAINBAUM: YES, YOUR HONOR. THANK YOU.

THE COURT: YOU'RE WELCOME.

BY MR. SCHAINBAUM:

Q. MR. OERTEL, WOULD YOU BE KIND ENOUGH TO TURN TO GG-1?

A. YEAH, I HAVE IT.

Q. YOU HAVE IT IN FRONT OF YOU?

A. YES.

Q. OKAY. WE LEFT OFF WHERE YOU HAD WRITTEN "ON BOTH THE 2007
AND 2008 RETURNS THE TAXPAYER FAILED TO USE THE CORRECT METHOD

1 OF CALCULATING TAX WHEN YOU RECEIVE A LARGE AMOUNT OF QUALIFIED
2 DIVIDENDS."

3 YOU WROTE THAT, CORRECT?

4 A. YES.

5 Q. AND THEN WOULD YOU STATE WHAT ELSE YOU WROTE?

6 A. IT CONTINUES: "HIS RETURNS SHOWED INCOME TAX OF \$8,019
7 AND \$6,156 FOR 2007 AND 2008 RESPECTIVELY. THE TAX SHOULD HAVE
8 BEEN REPORTED AS" 52 -- OR EXCUSE ME -- "\$5,232 AND \$5,992
9 RESPECTIVELY.

10 "FOR 2009 THE TAXPAYER FORGOT TO GIVE HIMSELF THE MAKE
11 WORK PAY CREDIT. FOR ALL THREE YEARS MY RAR ACCOUNTS FOR THESE
12 CHANGES MADE BY THE SERVICE CENTER BECAUSE EACH CHANGE BENEFITS
13 THE TAXPAYER. LET ME KNOW IF YOU HAVE ANY QUESTIONS, JIM."

14 Q. AND THAT'S YOU, JIM?

15 A. THAT'S ME.

16 Q. AND DID MR. HELGESEN, THE SPECIAL AGENT HERE, DID HE HAVE
17 ANY QUESTION?

18 A. I DON'T RECALL.

19 Q. YOU DON'T RECALL?

20 A. I DON'T REMEMBER IF HE DID OR NOT.

21 Q. EXCUSE ME?

22 A. I DON'T REMEMBER IF HE DID OR NOT.

23 Q. WOULD YOU BE KIND ENOUGH TO TURN TO GG-2. AND I'D LIKE TO
24 ASK YOU THIS QUESTION: DID YOU PREPARE WHAT WE HAVE IDENTIFIED
25 IN THE RECORD HERE AS GG-2?

A. YES.

Q. AND YOU'RE THE AUTHOR OF THAT?

A. YES.

Q. AND MS. SISKIND ASKED YOU A NUMBER OF QUESTIONS YESTERDAY, I BELIEVE, ABOUT YOUR METHODOLOGY; CORRECT?

A. METHODOLOGY OF WHAT?

Q. HOW YOU CALCULATED EITHER NUMBERS FOR INTEREST OR ACCOUNT BALANCES?

A. YES.

Q. ALL RIGHT. SO I WANT TO KNOW IF ONE OF YOUR METHODOLOGIES IS BACKING INTO AMOUNTS, IS THAT A METHODOLOGY YOU USED?

A. FOR CALCULATING INTEREST?

Q. NO. JUST THE METHODOLOGY THAT YOU USE?

A. IN REGARDS TO WHAT?

Q. WELL, FIRST LET ME ASK THIS QUESTION TO BE CLEAR: DO YOU USE A METHOD OF CALCULATING SOME SUM THE METHODOLOGY CALLED BACKING INTO AMOUNTS?

A. WELL, IF I ONLY HAVE -- LIKE ON HERE, IT EXPLAINS THAT THERE WAS A POSTING OF AN AMOUNT OF TAX ON THE TAXPAYER'S ACCOUNT AND THERE WAS SOME DIFFERENCE AND SO I HAD TO FIGURE OUT WHAT WOULD ACCOUNT FOR THAT DIFFERENCE IN TAX.

SO I BACKED INTO THAT TAXABLE INCOME.

Q. AND SO YOU BACKED INTO THAT AMOUNT BY YOU MAKING THE DETERMINATION; CORRECT?

A. WELL, I DID SOME CALCULATIONS, YEAH.

Q. OKAY. SO THIS MEMO IS, HOWEVER, IS YOUR AUTHORSHIP?

A. YES.

Q. AND I MOVE EXHIBIT GG-2 INTO EVIDENCE.

MS. SISKIND: NO OBJECTION.

THE COURT: IT'S RECEIVED WITHOUT OBJECTION.

(DEFENDANT'S EXHIBIT GG-2 WAS RECEIVED IN EVIDENCE.)

BY MR. SCHAINBAUM:

Q. ALL RIGHT. MR. OERTEL, DO YOU SEE ON THE THIRD PARAGRAPH THERE'S A SENTENCE CALLED THE 2007 INFOLT ALSO SHOWED A 290 POSTING OF 11,575. DO YOU KNOW WHAT A 290 POSTING IS?

A. A 290 POSTING IS AN ADDITIONAL TAX ASSESSMENT.

Q. AND ATTACHED TO THE RETURN IS CORRESPONDENCE BACK AND FORTH FROM THE TAXPAYER TO THE I.R.S. DO YOU SEE THAT?

A. YES.

Q. AND YOU SAW THAT CORRESPONDENCE; CORRECT?

A. I MUST HAVE SEEN SOMETHING, YEAH.

Q. PARDON ME?

A. WELL, I SAW SOMETHING, YEAH. I SAW SOME CORRESPONDENCE.

Q. AND YOU WROTE ON ONE LETTER THE TAXPAYER WROTE THAT THERE WAS 40,774 IN UNREPORTED INTEREST; IS THAT CORRECT?

A. YEAH, THAT'S WHAT IT SAYS.

Q. AND THE TAXPAYER HIMSELF SENT IN A LETTER TO THE I.R.S. SAYING, LOOK, I FORGOT TO REPORT \$40,774 IN INTEREST?

A. I DON'T KNOW WHAT THE WORDING OF THE LETTER WAS, SIR.

Q. WELL, WHATEVER THE WORDING OF THE LETTER WAS, YOU WROTE ON

ONE LETTER THE TAXPAYER WROTE THAT THERE WAS 40,774 IN
UNREPORTED INTEREST?

A. YES.

Q. AND THEN FURTHER DOWN YOU WROTE THE 2008 INFOLT? WHAT IS
AN INFOLT? I-N-F-O-L-T?

A. OH, THAT'S AN ON-LINE WAY OF PRINTING OUT OR SEEING AND
PRINTING OUT THE SAME KIND OF INFORMATION THAT YOU WOULD SEE ON
THOSE TRANSCRIPTS THAT WE SAW EARLIER.

AN INFOLT IS JUST INSTEAD OF REQUESTING A TRANSCRIPT, YOU
CAN ACTUALLY JUST GO ON THE ON-LINE SYSTEM WITHIN THE I.R.S.
AND LOOK AT THE TRANSCRIPT, AND THAT'S WHAT AN INFOLT IS. IT'S
I.R.S. JARGON.

Q. AND PART OF THIS I.R.S. JARGON IS THERE A NUMBER 150
POSTING? WHAT DOES THAT MEAN?

A. A 150 POSTING STATES -- WELL, A 150 POSTING IS HOW MUCH
TAX WAS ASSESSED ON AN ORIGINAL RETURN?

Q. I SEE. AND WITH RESPECT TO THIS MEMO OF BACKING INTO
AMOUNTS, YOU WROTE, WITHOUT KNOWING OR BEING ABLE TO DETERMINE
THE CAUSE OF THE \$165 DIFFERENCE BETWEEN THE RETURN'S AMOUNT OF
TAX AND THE INFOLT AMOUNT, I" -- THAT MEANS YOU; CORRECT?

A. YEAH, THAT'S ME.

Q. YEAH. -- "CHOSE TO BACK INTO THE CUMULATIVE AMOUNT OF TAX
FROM THE 150, THE INFOLT -- THE 150 POSTING AND THE SUBSEQUENT
290 POSTING OF 5,293." IS THAT RIGHT?

A. YEAH.

1 Q. AND AS A RESULT OF YOUR BACKING INTO AMOUNTS, HOW MUCH TAX
2 DID YOU COME UP WITH?

3 A. DO YOU MEAN THE 290 POSTING OR -- WHICH PART?

4 Q. I'M --

5 A. WHICH SENTENCE ARE YOU REFERRING TO, SIR?

6 Q. I'M LOOKING AT THE INCOME REPORTING THE TAX RATE IS
7 5 PERCENT SO THE DIFFERENCE IS 5293 DIVIDED BY 0.25 TO GET A
8 CHANGE TO INCOME OF 21,172.

9 YOU WROTE THAT?

10 A. YES.

11 Q. AND THE RGS, WHAT DOES THAT STAND FOR?

12 A. THAT IS REPORT GENERATING SYSTEM. IT'S THE COMPUTER
13 PROGRAM THAT REVENUE AGENTS USE TO CALCULATE AUDIT REPORTS.

14 Q. AND YOU ALSO WROTE "RGS SHOWED A VARIANCE WITH THIS CHANGE
15 SO BY TRIAL AND ERROR."

16 IS THAT A METHODOLOGY THAT YOU USED?

17 A. THAT'S WHAT I USED HERE, YEAH.

18 Q. AND SO THAT WAS YOUR METHOD HERE, TRIAL AND ERROR?

19 A. TO BACK INTO A CERTAIN NUMBER.

20 Q. TO BACK INTO A CERTAIN NUMBER. "THE INCOME AMOUNTS INPUT
21 INTO THE RGS WERE REVISED UNTIL THERE WAS A VARIANCE OF ONLY \$1
22 IN TAX." RIGHT?

23 A. RIGHT.

24 Q. AND THIS WAS WITH RESPECT TO YOUR DUTIES IN THIS CASE?

25 A. THAT'S CORRECT, IT'S ABOUT THIS CASE.

1 Q. AND THEN YOU FURTHER WENT ON FOR AMI'S 2009 AMT. WHAT DID
2 YOU WRITE ABOUT THAT? WHAT DID YOU DO WITH THAT?

3 A. DO YOU WANT ME TO READ IT?

4 Q. SURE.

5 A. "THE AGENT'S RAR PROGRAM" -- CAN I JUST EXPLAIN THAT RAR
6 MEANS REVENUE AGENT'S REPORT?

7 Q. THANK YOU.

8 A. OKAY. "THE AGENT'S RAR PROGRAM FOUND AN ERROR ON THE
9 RETURN IN THE AMOUNT OF \$6,479 OF ALTERNATIVE MINIMUM TAX THAT
10 WAS NOT DISCOVERED BY THE TAXPAYER OR THE SERVICE CENTER. AN
11 ADJUSTMENT WAS MADE IN THE RAR PROGRAM TO ELIMINATE THIS ERROR
12 FROM BEING CONSIDERED IN THE DEFICIENCY."

13 Q. AND ARE YOU STATING HERE THAT YOU -- THAT NEITHER THE
14 TAXPAYER NOR THE SERVICE CENTER DISCOVERED THE ERRORS THAT
15 YOU -- THAT YOU CORRECT IN THE RECORD?

16 A. THAT'S WHAT IT SAYS.

17 Q. AND YOU CORRECTED IT BY TRIAL AND ERROR?

18 A. IT DOESN'T SAY THAT.

19 Q. BUT YOU USE THAT TERM TRIAL AND ERROR?

20 A. I USED IT IN A PRIOR PARAGRAPH.

21 Q. AND THAT PRIOR PARAGRAPH RELATED TO WHAT, THE YEAR 2008?

22 A. YES.

23 Q. AND SO WHAT DID YOU COME OUT WITH IN YOUR DETERMINATION OF
24 THE TAX FOR 2007 AND '08?

25 MS. SISKIND: OBJECTION, YOUR HONOR. RELEVANCE TO

1 THE RESULT. METHODOLOGY IS ONE THING, BUT THE CALCULATION IS A
2 SEPARATE ISSUE.

3 THE COURT: SUSTAINED. MR. SCHAINBAUM.

4 MR. SCHAINBAUM: ALL RIGHT.

5 Q. BUT USING YOUR METHODOLOGY OF BACKING INTO AMOUNTS AND
6 TRIAL AND ERROR, WOULD YOU BE KIND ENOUGH TO TURN TO EXHIBIT --
7 LET'S SEE -- 134.

8 A. DO YOU WANT ME TO KEEP THIS OPEN?

9 Q. YES. BUT YOU CAN CLOSE IT FOR THE MOMENT.

10 A. OKAY.

11 Q. WE'LL GET BACK TO IT.

12 A. SURE. 134?

13 Q. YES.

14 A. OKAY. I'VE GOT IT.

15 Q. NOW, YOU UTILIZED EXHIBIT 134, WHICH IS AN ACCOUNT
16 SUMMARY; CORRECT?

17 A. YES.

18 Q. AND FOR WHAT PURPOSE?

19 A. I USE THAT, I BELIEVE, TO CALCULATE THE AMOUNT OF INTEREST
20 INCOME, AND I THINK IT'S ALSO PART OF THE HIGH BALANCE
21 CALCULATION.

22 Q. NOW, TURNING TO 136.

23 A. OKAY.

24 Q. DID YOU USE EXHIBIT 136 FOR WHAT PURPOSE?

25 A. THE SAME PURPOSE, NOTING THAT I DID FIND SOME

DISCREPANCIES BETWEEN A PART OF IT AND THE SCREEN SHOT. SO I
USED THE SCREEN SHOT.

Q. OH. WHICH SCREEN SHOT DID YOU USE?

A. LET'S SEE. GIVE ME A MOMENT BECAUSE I CAN'T REMEMBER
WHICH.

Q. ALL RIGHT. TAKE YOUR TIME.

I'LL JUST ASK YOU WHILE YOU'RE LOOKING FOR THE SCREEN
SHOT --

A. SURE.

Q. -- YOU USED THE SCREEN SHOT TO VERIFY THE EXHIBITS AT 136
AND 134; CORRECT?

A. YES.

Q. AND 136 REPRESENTS A LIST OF BANK ACCOUNTS; CORRECT?

A. OF CD'S, YES.

Q. OF CD'S?

A. YES.

Q. AND BUT YOU HEARD AARTI KUMAR TESTIFY THAT THERE WERE ONLY
TWO BASIC ACCOUNTS, ONE FOR THE FATHER AND ONE FOR THE MOTHER,
AND THE SONS AND DAUGHTERS WERE ADDED TO EACH ACCOUNT?

A. THERE ARE ALSO ACCOUNTS FOR THE TWO CHILDREN SEPARATELY.

Q. AND WERE THOSE SUBACCOUNTS?

A. I DON'T KNOW WHAT YOU MEAN BY A "SUBACCOUNT." I THINK
THEY EACH HAVE THEIR OWN ACCOUNT.

Q. AND WHAT WAS THE SOURCE OF THE FUNDS OF THOSE ACCOUNTS?

A. THE EVIDENCE WOULD SHOW THAT IT -- THAT THERE WERE CHECKS

FROM MR. DESAI, AS WELL AS TRANSFERS FROM MR. DESAI'S ACCOUNTS
AT HSBC INDIA, THAT HE PUT INTO HIS CHILDREN'S ACCOUNTS.

Q. AND SO ALL OF THE SOURCE -- STRIKE THAT.

SO THE TOTAL SOURCE OF THE FUNDS CAME FROM MR. DESAI?

A. AS FAR AS I RECALL, YEAH.

Q. ALL RIGHT. LET'S GO BACK TO 136. 136, DID YOU VERIFY THE
LIST OF ACCOUNTS ON THAT PAGE?

A. YES.

Q. AND SO AS YOU SIT THERE TODAY UNDER OATH, YOU CAN TELL US
THAT ALL OF THOSE ACCOUNTS THAT YOU CLAIMED ARE SEPARATE
ACCOUNTS EXIST; CORRECT?

A. YES.

Q. AND WHAT DID YOU USE AS THE VERIFICATION SOURCE?

A. THE PRINT SCREEN.

Q. THE WHAT?

A. THE SCREEN SHOT OR SCREEN DUMP, WHATEVER YOU WANT TO CALL
IT.

Q. AND WHICH SCREEN SHOT OR SCREEN DUMP? I APOLOGIZE IF I
INTERRUPTED YOUR SEARCH FOR WHICH ONE IT WAS.

A. THAT'S ALL RIGHT.

IT WAS 72, EXHIBIT 72.

Q. EXHIBIT 72. AND WHY DID YOU USE EXHIBIT 72?

A. BECAUSE IT'S IN EVIDENCE.

Q. AND WHY DID YOU USE -- EXCUSE ME. WHY DID YOU USE THAT
PARTICULAR EXHIBIT, 72?

1 A. I DIDN'T USE JUST ONE PARTICULAR EXHIBIT IN MY
2 CALCULATIONS. I LOOKED AT ALL OF THE EXHIBITS, AS WELL AS
3 LISTENED TO ALL OF THE TESTIMONY.

4 Q. WELL, WHY DID YOU PARTICULARLY USE SCREEN SHOTS TO VERIFY
5 THE EXHIBITS HERE, EXHIBITS 136 AND 134?

6 A. BECAUSE ACCORDING TO THE TESTIMONY OF MS. KATJU AND
7 MS. KUMAR THOSE WERE STRAIGHT OUT OF THE HSBC INDIA COMPUTER
8 SYSTEM. SO I ASSUMED THAT THOSE WERE THE MOST ACCURATE.

9 Q. AND WHY DID YOU ASSUME THAT THOSE WERE THE MOST ACCURATE?

10 A. BECAUSE THEY CAME OUT OF A BANK COMPUTER SYSTEM.

11 Q. WHAT DOES THAT MEAN? ARE YOU SAYING SIMPLY BECAUSE A
12 COMPUTER SYSTEM IS FROM A BANK THAT IT'S ACCURATE?

13 A. I'M SAYING THAT THE INFORMATION THAT WAS PUT INTO EVIDENCE
14 INCLUDES COMPUTER SCREENS AND THEY'RE FROM A BANK COMPUTER AND
15 I USED THEM TO MAKE MY CALCULATIONS.

16 Q. WELL, DO YOU RECALL TESTIFYING IN ANSWER TO THE QUESTION
17 FROM THE PROSECUTOR HERE, MS. SISKIND, THAT -- THE QUESTION
18 WAS: "NOW, GIVEN" -- THIS APPEARS ON THE TRANSCRIPT AT PAGE
19 1258, LINE 20.

20 "NOW, GIVEN THAT YOU NOTICE THE TRANSPOSITION ERROR --"
21 AND THE TRANSPOSITION ERROR, WOULD YOU AGREE WITH ME, APPEARS
22 ON PAGE 2 OF EXHIBIT 136?

23 A. THAT'S THE START AND MATURITY DATES, YES.

24 Q. AND ISN'T THAT THE TRANSPOSITION ERROR?

25 A. YES.

Q. AND THAT'S WHERE THIS PARTICULAR DOCUMENT COMING FROM A BANK COMPUTER SHOWS THAT THE MATURITY DATE OCCURS BEFORE THE START DATE; CORRECT?

A. YES.

Q. AND YOU TRANSPOSED IT BACK TO WHAT YOU BELIEVE IS THE ACCURATE DATE?

A. WELL, YOU CAN'T START A CD IN THE YEAR BEFORE IT MATURES.

SO I USED THE START DATE AS IN 2008 AND THE MATURITY DATE AS IN 2009.

Q. WELL, I'M A LITTLE PUZZLED NOW. YOU TOLD ME THAT THIS DOCUMENT REPRESENTED BY EXHIBIT 136 CAME OUT OF A BANK COMPUTER, AND BECAUSE IT CAME OUT OF A BANK COMPUTER, YOU RELIED ON IT AS BEING ACCURATE.

A. NO, THAT'S NOT AT ALL WHAT I SAID.

Q. OH. WHAT DID YOU SAY?

A. WHAT I SAID IN MY TESTIMONY WITH MS. SISKIND IS THAT 136 IS A SPREADSHEET THAT I BELIEVE WAS MADE AT THE FREMONT REPRESENTATIVE OFFICE.

Q. AND WHERE WAS THAT LOCATED?

A. FREMONT.

Q. AND WHERE IS FREMONT?

A. IT'S ABOUT 15 MILES NORTH OF HERE.

Q. AND THAT'S HERE IN CALIFORNIA?

A. YEP.

Q. AND THAT'S HERE IN THE UNITED STATES OF AMERICA?

A. YEP.

Q. OKAY. SO -- BUT YOUR ANSWER TO MS. SISKIND'S QUESTION WAS, "NOW, GIVEN THAT YOU NOTICE THAT THIS TRANSPOSITION ERROR, AS YOU CALLED IT, WHAT DID YOU DO IN ORDER TO DETERMINE WHAT THE CORRECT START AND MATURITY DATES SHOULD BE FOR THESE CERTIFICATES OF DEPOSITS?"

YOUR ANSWER WAS: "I ALWAYS FELL BACK ON WHATEVER THE SCREEN SHOT SHOWED."

IS THAT ACCURATE?

A. YES, TO THE EXTENT THAT THERE WAS A SCREEN SHOT AVAILABLE FOR THAT CD AND THAT PERIOD.

Q. AND THEN MS. SISKIND FOLLOWED UP. THE QUESTION WAS: "AND WHY WAS THAT?"

AND YOUR ANSWER WAS: "BECAUSE THE SCREEN SHOTS CAME FROM A COMPUTER WHICH WOULD MEAN, I BELIEVE, THAT THEY ARE ABSENT OF HUMAN ERROR."

IS THAT CORRECT? IS THAT WHAT YOU --

A. THAT'S WHAT I SAID, YEAH.

Q. "AND SO IF THEY CAME RIGHT OUT OF A COMPUTER, I ASSUMED --" YOU MADE AN ASSUMPTION; CORRECT?

A. IF THAT'S WHAT I SAID.

Q. WELL, IT SAYS HERE "BECAUSE THE SCREEN SHOTS CAME FROM A COMPUTER WHICH WOULD MEAN, I BELIEVE, THAT THEY'RE ABSENT OF HUMAN ERROR. AND SO IF THEY CAME RIGHT OUT OF A COMPUTER, I ASSUMED THEY WERE CORRECT."

CROSS EXAMINATION

1 A. THAT'S WHAT I SAID.

2 Q. NOW, HOW MANY YEARS HAVE YOU BEEN A REVENUE AGENT?

3 A. TWENTY-SEVEN YEARS AS OF LAST SATURDAY.

4 Q. CONGRATULATIONS.

5 A. THANK YOU.

6 Q. NOW, WHAT KIND OF INFORMATION GETS INTO A COMPUTER?

7 A. WHAT KIND OF INFORMATION?

8 Q. RIGHT. WHO PUTS IT IN?

9 A. I GUESS THERE ARE DIFFERENT WAYS OF PUTTING IT IN.

10 Q. AND IN ALL OF THOSE DIFFERENT WAYS, DOES A HUMAN PUT IN
11 THE INFORMATION?

12 MS. SISKIND: OBJECTION TO THE VAGUENESS OF THE
13 QUESTION. WHAT COMPUTER SYSTEM? WHAT RECORD? THERE'S LOTS OF
14 DIFFERENT --

15 THE COURT: DID YOU UNDERSTAND THE QUESTION, SIR?

16 THE WITNESS: WELL, ACTUALLY SHE'S RIGHT. IT IS
17 KIND OF VAGUE.

18 THE COURT: YOU DON'T UNDERSTAND.

19 THE WITNESS: YEAH.

20 THE COURT: WHY DON'T YOU ASK A QUESTION?

21 BY MR. SCHAINBAUM:

22 Q. IN GETTING INFORMATION OUT OF A COMPUTER, DO YOU KNOW THE
23 SOURCE OF HOW THE INFORMATION GETS INTO THE COMPUTER?

24 THE COURT: WE'RE TALKING ABOUT THE I.R.S. COMPUTER
25 SYSTEM HERE?

MR. SCHAINBAUM: WE'RE TALKING ABOUT ANY COMPUTER SYSTEM.

MS. SISKIND: I OBJECT TO TALK ABOUT ANY COMPUTER SYSTEM.

THE COURT: SUSTAINED AS --

MR. SCHAINBAUM: ALL RIGHT. NOW WE'LL TALK ABOUT THE I.R.S. COMPUTER.

Q. DO YOU KNOW HOW INFORMATION GETS INTO THE I.R.S. COMPUTER?

A. THERE ARE DIFFERENT WAYS. YOU CAN GET IT ELECTRONICALLY. YOU CAN GET IT BY SOMEONE INPUTTING IT. ALL OF THAT.

Q. AND WELL, WHEN SOMEONE INPUTS IT, IS THAT A PERSON? A HUMAN?

A. YES, IT'S A HUMAN BEING AT THE SERVICE CENTER.

Q. AND IN ALL OF YOUR 27 YEARS, HAVE YOU EVER FOUND THAT THERE HAS BEEN AN ERROR OR ERRORS INPUT INTO THE COMPUTER SYSTEM?

A. YES.

Q. HOW OFTEN IN YOUR EXPERIENCE HAS THAT OCCURRED?

A. THAT'S PRETTY RARE.

Q. PRETTY RARE?

A. IT'S PRETTY RARE BECAUSE IF SOMEONE WERE TO MAKE AN ERROR, LET'S SAY, IN INPUTTING SOMETHING, NORMALLY IT IS FOUND. IT DEPENDS ON WHAT TYPE OF INPUT ERROR AND THE WHOLE THING.

THERE'S A LOT OF AREAS.

Q. IN THE I.R.S., HAVE YOU EVER HEARD OF THE CONCEPT OF GIGO?

A. NO.

Q. YOU NEVER HEARD OF THE CONCEPT OF INPUTTING INTO THE
COMPUTER SYSTEM GIGO?

A. I NEVER HEARD THAT. IS THAT A NAME? INITIALS? ACRONYM?

Q. IT'S AN ACRONYM FOR GARBAGE IN, GARBAGE OUT.

A. I HEARD THAT TERM.

Q. OH, GOOD. AND SO LOOKING AT THE SCREEN SHOTS THAT YOU
RELIED ON FROM SOME COMPUTER LOCATED ALLEGEDLY IN INDIA, YOU'RE
SAYING THAT WITHOUT MORE, YOU RELIED ON THE SCREEN SHOTS, THOSE
DUMP SHOTS FOR YOUR ANALYSIS; CORRECT?

A. WELL, ACTUALLY I HAVE TO USE WHAT IS IN EVIDENCE. AS A
SUMMARY WITNESS, IT IS MY JOB TO SUMMARIZE THE EVIDENCE, OKAY?
I HAVE TO TAKE IT AT FACE VALUE, AND THAT'S WHAT I DO.

IF SOMETHING IS IN EVIDENCE, I USE IT. AND AS IN THE CASE
OF EXHIBIT 136, WHEN I FIND A DISCREPANCY, I ELIMINATE THE
DISCREPANCY SO THAT MY CALCULATIONS CAN BE THE MOST ACCURATE
THAT THEY POSSIBLY CAN BE.

Q. SO YOU MAKE THE DETERMINATION AND CHANGE THE EVIDENCE,
EVEN THOUGH THE EVIDENCE MIGHT BE IN ERROR OR THERE MIGHT BE A
DISCREPANCY. DO I GET THAT FROM YOUR TESTIMONY?

A. I DON'T CHANGE EVIDENCE.

Q. EXCUSE ME. YOU JUST SAID THAT WHEN YOU FIND AN ERROR, YOU
JUST CORRECT IT.

A. IF I FIND AN ERROR, I CORRECT IT. I DON'T CHANGE
ANYTHING.

Q. WELL, FOR EXAMPLE, JUST TO KEEP IT SIMPLE, IF YOU HAVE THE MATURITY DATES SET FORTH SPECIFICALLY ON EXHIBIT 136 AND THE START DATE SET FORTH SPECIFICALLY, YOU SAID YOU TRANSPOSED IT TO WHAT YOU BELIEVED WAS THE TRUE START DATE AND THE TRUE MATURITY DATE; CORRECT?

A. I USED ALL OF THE EVIDENCE. I DIDN'T USE JUST ONE SOURCE. I -- YOU KNOW, IF SOMETHING WAS A DISCREPANCY, I FIXED IT. THAT'S --

Q. YOU FIXED THE EVIDENCE; IS THAT WHAT YOU'RE SAYING?

A. I DON'T FIX EVIDENCE, SIR.

Q. WELL, LET'S EXAMINE THAT. LET'S EXAMINE THAT.

FOR EXAMPLE, LOOKING AT -- LET'S GO TO -- LOOK AT 137. ON 137, THE LAST PAGE, THERE ARE WHAT APPEARS TO BE -- OH, IT'S NOT THE LAST PAGE. THERE'S A PAGE CALLED DUPLICATE STATEMENT OF ACCOUNT. DO YOU SEE THAT?

MS. SISKIND: YOUR HONOR, THERE ARE SEVERAL PAGES CALLED THAT. COULD MR. SCHAINBAUM IDENTIFY WHICH OF THOSE?

THE COURT: ARE THEY PAGINATED?

THE WITNESS: IF YOU COULD TELL ME WHICH YEAR AND WHICH ACCOUNT, THAT WOULD HELP.

MR. SCHAINBAUM: OKAY.

Q. I'M LOOKING AT EXHIBIT 137, AND I'M LOOKING AT THE PAGE THAT SAYS DUPLICATE STATEMENT OF ACCOUNT THAT HAS A COLUMN ON THE LEFT WITH IDENTIFICATION AND A COLUMN IN THE MIDDLE WITH NUMBERS THAT HAS ON THE SECOND PAGE ONE ACCOUNT, AND I'M

CROSS EXAMINATION
1 LOOKING AT THAT, DUPLICATE STATEMENT OF ACCOUNT?

2 A. AND THIS IS IN 137?

3 Q. CORRECT. THIS WOULD BE -- LET'S SEE.

4 A. WELL, COULD YOU TELL ME WHICH ACCOUNT IT IS IN REFERENCE
5 TO, PLEASE. IF YOU CAN TELL ME WHICH ACCOUNT AND FOR WHICH
6 YEAR, THEN IT WOULD MAKE IT MUCH EASIER FOR ME TO FIND.

7 Q. SURE. THE ACCOUNT WOULD BE 2479.

8 A. 2479?

9 Q. THE CUSTOMER IS SUPPOSEDLY 3679. YOU KNOW THAT NUMBER?

10 MS. SISKIND: YOUR HONOR, JUST FOR CLARITY, THERE
11 ARE FOUR PAGES THAT ARE THE LAST FOUR PAGES OF THE EXHIBIT, ALL
12 OF WHICH SAY DUPLICATE STATEMENT OF ACCOUNT AND ALL THAT RELATE
13 TO 3679. IS THAT ONE OF THE LAST FOUR PAGES IN THE EXHIBIT?
14 IF SO, WHICH ONE?

15 MR. SCHAINBAUM: IT'S THE FIRST OF THE LAST
16 FOUR PAGES. IT'S THE FIRST TWO PAGES.

17 THE COURT: DOES THAT HELP YOU, SIR?

18 THE WITNESS: IT'S THE -- I'M SORRY. SAY IT AGAIN.

19 MR. SCHAINBAUM: IT'S THE FIRST TWO OF THE LAST
20 FOUR PAGES.

21 THE WITNESS: IT'S THE FIRST TWO OF THE LAST
22 FOUR PAGES. OKAY.

23 BY MR. SCHAINBAUM:

24 Q. DO YOU SEE HOW MANY ACCOUNTS YOU HAVE THERE?

25 A. YES.

Q. OKAY. WHEN YOU ARE LOOKING AT EXHIBIT 136, FOR EXAMPLE, I
ASKED YOU IF YOU COULD -- IF ALL OF THOSE ACCOUNTS ARE REAL.
BY LOOKING AT 0049689 --

A. UH-HUH.

Q. -- 070 ON EXHIBIT 136, CAN YOU FIND THAT ACCOUNT ON THOSE
TWO PAGES?

A. THE 9689 YOU SAID?

Q. YEAH. I'M ASKING YOU IF YOU CAN FIND THAT CD ON THAT
PAGE. AND THAT'S THE CD THAT IS REFERENCED AS 9689-070. ON
EXHIBIT 136, CAN YOU FIND THAT ON THE 2 PAGES IN THE
EXHIBIT 137?

A. 9689? I DON'T SEE IT ON EITHER OF THOSE PAGES.

Q. HOW ABOUT THE LAST TWO PAGES, DO YOU SEE IT THERE?

A. WELL, YOU SAID THAT IT WAS THE LAST TWO PAGES.

Q. NO. I SAID THE FIRST TWO OF THE LAST FOUR PAGES, BUT YOU
CAN LOOK AT -- LOOK AT ALL FOUR PAGES. JUST GO AHEAD AND LOOK
AT ALL FOUR PAGES AND SEE IF YOU CAN FIND THAT ACCOUNT.

A. NO, IT'S NOT ON THERE.

Q. BUT YOU USED THAT ACCOUNT, AMONG OTHER ACCOUNTS ON 137, TO
MAKE YOUR CALCULATION; CORRECT?

A. WELL, YOU HAVE TO LOOK AT THOSE DUPLICATE STATEMENTS OF
ACCOUNT. THEY HAVE MR. DESAI'S NAME ON THEM. I WOULD ASSUME
THAT IF IT HAS MR. DESAI'S NAME ON THEM THAT THEY WOULD BE IN
MR. DESAI'S NAME.

BUT 9689, I BELIEVE, IS HIS SON.

Q. YEAH. SO YOU SEE THAT ACCOUNT?

A. ON THE STATEMENT WITH MR. -- WELL, THE STATEMENT SHOWS THAT IT'S MR. DESAI'S ACCOUNT. IT DOESN'T HAVE HIS SON'S NAME ON IT.

Q. WHAT -- I'LL PUT IT ANOTHER WAY. WHAT DID YOU DO TO VERIFY THAT ALL OF THOSE ACCOUNTS APPEARING ON 136 ARE ACTUAL ACCOUNTS?

A. WELL, I MEAN I -- WHENEVER I DID MY ANALYSIS, I TRIED TO LOOK AT, YOU KNOW, THE SUBSTANCE OF EVERYTHING AND WHATEVER WAS, YOU KNOW, OUT OF THE COMPUTER SYSTEM OR WHATEVER, THOSE ARE THE ONES THAT I FELL BACK ON.

Q. SO WHICH ONE OR WHICH COMPUTER PRINTOUTS DID YOU FALL BACK ON IN THIS CASE?

A. FOR WHAT?

Q. FOR VERIFYING THAT THIS IS A REAL ACCOUNT.

A. WHAT, THE 3679? OR THE 9689?

Q. THE 9689-070?

A. OKAY. IF YOU GO TO EXHIBIT 72, PAGE 8, THERE IS A SCREEN SHOT THAT SHOWS 9689.

Q. JUST ONE MOMENT, PLEASE.

OKAY, THANK YOU FOR YOUR PATIENCE. I HAVE 72 IN FRONT OF ME.

A. OKAY. GO TO PAGE 8, PLEASE.

Q. PAGE 8. DOES IT HAVE A BATES NUMBER IN THE LOWER RIGHT-HAND CORNER?

A. IT SAYS HSBC-DESAI 1498.

Q. OKAY. I HAVE THAT IN FRONT OF ME. THAT'S ONE OF THE
COMPUTER PRINTOUTS?

A. THAT'S A SCREEN DUMP OR A SCREEN SHOT, YES.

Q. AND THAT'S IN YOUR STATEMENT, "BECAUSE THE SCREEN SHOTS
CAME FROM A COMPUTER WHICH WOULD MEAN, I BELIEVE, THAT THEY ARE
ABSENT OF HUMAN ERROR, AND SO IF THEY CAME RIGHT OUT OF THE
COMPUTER, I ASSUME THEY WERE CORRECT."

THAT'S WITHIN YOUR STATEMENT; CORRECT?

A. THAT'S WHAT I SAID.

Q. OKAY. SO WHERE DO WE HAVE 070? AND I'M LOOKING AT
HSBC-DESAI 0001498, PART OF EXHIBIT 72.

A. SO YOU'RE LOOKING FOR WHICH ACCOUNT AGAIN? 070?

Q. CORRECT. THE ONE THAT HAS FULL IDENTIFICATION AS
0049689-070. DO YOU SEE THAT ON THIS SCREEN SHOT?

A. 070? I DON'T SEE 070 ON THE SCREEN SHOT. IT CAN'T BE
THERE BECAUSE THAT CD DIDN'T EXIST UNTIL EIGHT DAYS LATER.

Q. AND SO WHAT DID YOU USE FOR VERIFICATION? HOW DO YOU KNOW
IT EXISTED EIGHT DAYS LATER? YOU'RE PRECISE NOW. YOU'RE
SAYING THAT IT EXISTS EIGHT DAYS LATER. WHAT IS THE PRECISION
OF THAT STATEMENT?

A. OKAY. NOW, YOU HAVE TO REMEMBER WHAT I SAID. WHENEVER
THERE IS A SCREEN SHOT AVAILABLE TO FALL BACK ON, THEN THAT'S
WHAT I USE.

NOW, I CAN'T USE THE SCREEN SHOT IN 72. THAT WOULD BE

1 WRONG BECAUSE THIS IS DATED EIGHT DAYS BEFORE THE ONE SHOWN
2 THAT YOU'VE JUST REFERRED TO.

3 THE SPREADSHEET IN 136, I DON'T SEE HOW IT CAN RELATE TO A
4 SCREEN SHOT FROM EIGHT DAYS EARLIER BECAUSE THIS CD'S DIDN'T
5 EXIST THEN.

6 Q. WELL, WHAT DID YOU USE TO VERIFY THAT THAT ACCOUNT EXISTS?
7 I'M NOT ASKING YOU TO BE RESTRICTIVE TO THE SCREEN SHOT.
8 YOU'RE THE ONE WHO MADE THE CALCULATIONS. WHAT DID YOU USE TO
9 VERIFY THAT IS A CORRECT ACCOUNT?

10 A. OKAY. YOU HAVE TO REMEMBER AGAIN, I'M A SUMMARY WITNESS.
11 I SUMMARIZE THE EVIDENCE.

12 136 IS IN EVIDENCE. IT STATES THAT THERE IS A CD THAT
13 STARTED EIGHT DAYS AFTER THIS SCREEN SHOT.

14 I HAVE TO TAKE THE EVIDENCE AS IT IS ADMITTED AND IN THIS
15 PIECE OF EVIDENCE IT SHOWS CD'S ON 136, SO I USED 136.

16 IT WOULD BE WRONG IF I DIDN'T DO IT BECAUSE THAT WOULD
17 MEAN THAT I'M NOT TAKING INTO ACCOUNT ALL OF THE EVIDENCE.

18 Q. NOW, MR. OERTEL, I'M A LITTLE CURIOUS. THE TWO-PAGE
19 EXHIBIT, 136, THAT YOU CALL A SPREADSHEET, IT HAS NO DATE, DOES
20 IT, OTHER THAN THE TRANSPOSITIONAL ERROR OF THE START DATE
21 BEING LATER THAN THE MATURITY DATE?

22 A. IT IS NOT DATED, THAT IS CORRECT.

23 Q. SO HOW CAN YOU SAY THAT THE SCREEN SHOT IS EIGHT DAYS
24 LATER?

25 A. SIR, WHAT I'M SAYING IS IF YOU LOOK AT 136 AND YOU LOOK AT

CROSS EXAMINATION

1 THE CD'S THAT IT MENTIONS IN THAT ACCOUNT NUMBER, IT SAYS
2 APRIL 18, 2008.

3 YOU ARE REFERRING TO A SCREEN SHOT FROM EIGHT DAYS
4 EARLIER, OKAY?

5 THE CD'S THAT STARTED EIGHT DAYS AFTER THE SCREEN SHOT
6 WOULD NOT BE ON THE SCREEN SHOT.

7 HOWEVER, IN THIS PIECE OF EVIDENCE, WHICH HAS BEEN
8 ADMITTED, AND WHICH I MUST USE, SAYS THAT THERE IS A CD THAT
9 STARTS -- WELL, SEVERAL CD'S THAT START APRIL 18TH, 2008.

10 ON ITS FACE VALUE, I HAVE TO TAKE THAT. AND THAT'S WHAT I
11 DID.

12 Q. SO YOU'RE SAYING THAT YOU DIDN'T VERIFY ANYTHING OTHER
13 THAN TAKING THE EVIDENCE AS ITS FACE VALUE EVEN THOUGH IT HAS
14 NO DATE AND NO OTHER VERIFICATION?

15 A. SIR, I AM REQUIRED TO LOOK AT ALL OF THE EVIDENCE, USE ALL
16 OF THE EVIDENCE.

17 IT IS NOT UP TO ME TO JUDGE THE EVIDENCE. IT IS UP TO ME
18 TO SUMMARIZE THE EVIDENCE.

19 AND THE EVIDENCE SAYS THAT STARTING ON APRIL 18TH, 2008,
20 THAT THERE WERE A BUNCH OF CD'S STARTED. SO THAT'S WHAT I
21 USED.

22 Q. SO YOU SAY THAT YOU USE THE EVIDENCE AS YOU FIND IT?

23 A. I USE THE EVIDENCE WHAT?

24 Q. YOU USE THE EVIDENCE AS IT EXISTS. YOU DON'T DO ANYTHING
25 TO THE EVIDENCE; CORRECT?

CROSS OERTEL

1 A. NO. OKAY, NOW YOU HAVE USED THE TERM BEFORE "FIX" THE
2 EVIDENCE WHICH IMPLIES THAT SOMEHOW I MANIPULATE IT OR
3 SOMETHING, BUT I DON'T.

4 WHAT I DO IS THAT IF I FIND A DISCREPANCY, AS WE HAD SHOWN
5 BEFORE IN THE TRANSPOSITION ERRORS ON 136, IF THERE'S AN ERROR,
6 THEN I REMOVE IT BECAUSE I WANT MY CALCULATIONS TO BE AS
7 ACCURATE AS POSSIBLE.

8 Q. WELL, WHEN YOU REMOVE IT, ARE YOU FIXING THE EVIDENCE OR
9 ARE YOU JUST LEAVING IT IN PLACE IF YOU'RE SUPPOSED TO FOLLOW
10 THE EVIDENCE? I DON'T UNDERSTAND THAT.

11 A. I HAVE TO USE THE CONTINUITY OF THE EVIDENCE AS A WHOLE.
12 I'M NOT SUPPOSED TO USE ONE PIECE OF EVIDENCE OR ANOTHER PIECE
13 OF EVIDENCE. I'M SUPPOSED TO LOOK AT IT AS A WHOLE AND, BASED
14 ON THAT, DO THE BEST THAT I CAN TO COME UP WITH AN AMOUNT OF
15 INTEREST INCOME, WHICH IS WHAT I DID.

16 Q. WELL, MR. OERTEL, YOU ALSO TESTIFIED THAT YOU CHANGED THE
17 NUMBERS ON EXHIBIT 23-1. DO YOU HAVE THAT BEFORE YOU?

18 A. BEAR WITH ME.

19 YES.

20 Q. YOU CHANGED THE NUMBERS; CORRECT?

21 A. I DIDN'T -- NO. WHAT THIS REFERS TO -- IF I UNDERSTAND
22 WHAT YOU'RE GETTING AT -- I THINK YOU'RE REFERRING TO THE
23 COLUMN THAT SAYS "INTEREST PAID PER HSBC STATEMENT." AND THERE
24 ARE -- THE NUMBER 4, 5, AND 6 AMOUNTS SHOWN THERE I DETERMINED
25 WERE IN ERROR.

1 THAT'S WHY WHENEVER I DETERMINED THE AMOUNT OF APPROXIMATE
2 INTEREST INCOME, I DID NOT USE THEM. RATHER, I USED MY OWN
3 CALCULATION, WHICH I BELIEVE IS THE MOST ACCURATE.

4 Q. BUT YOU THEN CHANGE THE EVIDENCE? YOU FIX THE EVIDENCE BY
5 WHAT YOU BELIEVE, NOT WHAT THE EVIDENCE SHOWS, BUT WHAT YOU
6 BELIEVE IS MORE ACCURATE; AM I CORRECT?

7 A. I'M NOT CHANGING EVIDENCE. IN FACT, THIS COLUMN STATES
8 WHAT THE EVIDENCE STATES. IT SAYS WHAT IS ON THE HSBC
9 STATEMENT. IT SAYS 171,000 BLAH, BLAH, BLAH. SO THAT'S WHAT I
10 PUT DOWN.

11 Q. ALL RIGHT.

12 A. NOW, ACCORDING TO MY TESTIMONY, WHAT I DID TO CALCULATE
13 THE INTEREST INCOME, I WANTED TO VERIFY THAT EVERYTHING WAS
14 CORRECT. THAT'S MY JOB. I VERIFY THINGS TO MAKE SURE THAT
15 THEY ARE AS ACCURATE AS POSSIBLE.

16 SO BECAUSE I KNEW THAT THOSE THREE NUMBERS FROM THE HSBC
17 STATEMENT WERE NOT CORRECT, I USED MY OWN CALCULATION TO COME
18 UP WITH WHAT I BELIEVE IS A FAIR ESTIMATION OF HIS INTEREST
19 INCOME FOR THAT ACCOUNT FOR THAT YEAR.

20 Q. AND YOU'RE SAYING THAT WHAT I BELIEVE IS A FAIR ESTIMATION
21 SUPERSEDES WHAT THE EVIDENCE SHOWS? DO I GET THAT OUT OF YOUR
22 TESTIMONY? IT'S A YES OR NO.

23 A. NO. I'M GOING TO EXPLAIN.

24 Q. ALL RIGHT. YOU GO AHEAD AND EXPLAIN, BUT THE ANSWER IS,
25 "NO, I'M GOING TO EXPLAIN."

CROSS EXAMINATION

1 A. THAT'S NOT WHAT I SAID.

2 IT IS MY JOB TO USE THE EVIDENCE TO DETERMINE HOW MUCH
3 INTEREST WAS PAID ON AN ACCOUNT.

4 THERE'S EVIDENCE IN THE RECORD, WHENEVER YOU LOOK AT THE
5 SPREADSHEET THAT THIS -- OR THIS HSBC STATEMENT, YOU CAN SEE
6 VERY CLEARLY THAT IT'S NOT ACCURATE, OKAY. IT'S NOT ACCURATE.

7 IF SOMETHING IS NOT ACCURATE, I SHOULDN'T BE USING IT. I
8 SHOULD BE, INSTEAD, USING THE OTHER EVIDENCE WHICH SHOWS WHAT
9 IS CORRECT.

10 AND I USED WHAT WAS CORRECT TO COME UP WITH MY AMOUNT OF
11 INTEREST PAID.

12 Q. WHAT IS THE OTHER EVIDENCE? WHAT IS THE OTHER EVIDENCE
13 THAT MAKES THIS CORRECT? ALL YOU'RE SAYING HERE IS THAT, AS I
14 UNDERSTAND IT, IS THAT I MADE A DECISION THAT SOMETHING WAS
15 MORE FAIR, THEREFORE, I CHANGED THE NUMBERS WHICH ARE NOT THE
16 EVIDENCE.

17 A. SIR, I EXPLAINED THIS SEVERAL TIMES.

18 Q. YEAH, WELL, EXPLAIN TO ME WHERE YOU GET THE OTHER NUMBERS
19 FROM THE EVIDENCE. IF THAT'S ALL YOU ARE IS A SUMMARY
20 WITNESS --

21 A. THAT'S RIGHT.

22 Q. -- YOU'RE NOT SOMEONE ELSE WHO IS PUT IN THE, WHAT, IN THE
23 MERLIN'S MAGICIAN CATEGORY --

24 MS. SISKIND: OBJECTION, YOUR HONOR, ARGUMENTATIVE.

25 MR. SCHAINBAUM: ALL RIGHT. I'LL WITHDRAW THE

CROSS OERTEL
1 QUESTION.

2 THE COURT: ALL RIGHT. WITHDRAW THE QUESTION.

3 DO YOU HAVE ANOTHER QUESTION?

4 MR. SCHAINBAUM: HUH?

5 THE COURT: DO YOU HAVE ANOTHER QUESTION?

6 MR. SCHAINBAUM: YES, I DO.

7 Q. SO, MR. OERTEL, ON EXHIBIT 23-1, YOU CHANGE THE NUMBERS
8 AND YOU SAY THERE IS OTHER EVIDENCE. I TURN TO EXHIBIT 137,
9 THE PAGE THAT SHOWS A GRID FOR 2007.

10 DO YOU HAVE THAT BEFORE YOU?

11 A. 136? OR, I'M SORRY, 137?

12 Q. YES.

13 A. THERE ARE SEVERAL GRIDS. WHICH ONE ARE YOU REFERRING TO?

14 Q. I'M REFERRING TO THE GRID THAT SAYS 2007.

15 A. OKAY. YEAH, THERE'S A -- ACCORDING TO THE LETTER IN FRONT
16 OF IT -- ARE YOU REFERRING TO 2007 ACCOUNT 3679?

17 Q. YES.

18 A. OKAY. WHAT DO YOU WANT TO KNOW?

19 Q. EXCUSE ME. DO YOU SEE IN THAT GRID ACCOUNT 3679-051,
20 SUBACCOUNT 052, SUBACCOUNT 053, SUBACCOUNT 054, SUBACCOUNT 055,
21 AND SUBACCOUNT 056? DO YOU SEE THOSE NUMBERS?

22 A. YES, I DO.

23 Q. AND WHAT IS THE ALLEGED SUPPOSED INTEREST AMOUNTS?

24 A. IT IS, LIKE IT SAYS ON MY CALCULATION -- NOW, THIS IS IN
25 RUPEES.

Q. I'M ASKING YOU WHAT IS THE EXACT NUMBER THAT IS IN THE GRID, WHAT IS THAT NUMBER?

A. IT IS 171,492.50.

Q. AND DOES THAT NUMBER REPEAT ITSELF FROM SUBACCOUNT 051 TO SUBACCOUNT 056?

A. YES, IT DOES.

Q. NOW, TURNING BACK TO 23-1?

A. UH-HUH.

Q. DO YOU SEE THOSE NUMBERS CONTINUE AFTER ACCOUNT NUMBER 053?

A. YES.

Q. YOU SEE 171,492.50, THE COLUMN CALLED INTEREST PAID PER HSBC STATEMENT, AND THAT'S THE STATEMENT THAT WE JUST LOOKED AT IN EXHIBIT 136, PAGE 2?

A. YES, AND THEY MATCH.

Q. OH? WHAT ABOUT THE NUMBER 68,597? WHERE IS THAT FOUND IN THE STATEMENT THAT YOU REFER TO?

A. 68,197?

Q. YES. NO, 68,597.

MS. SISKIND: YOUR HONOR, DOES MR. SCHAINBAUM HAVE THE MOST UP-TO-DATE VERSION OF THIS EXHIBIT?

MR. SCHAINBAUM: I'M NOT SURE. IS THERE ANOTHER NUMBER?

MS. SISKIND: I DON'T SEE ON MY COPY 68,597.

MR. SCHAINBAUM: THAT'S THE NUMBER I HAVE, BUT IF

THERE'S ANOTHER NUMBER, I'LL TAKE IT. IT APPEARS AT
EXHIBIT 137, PAGE 2.

Q. WHATEVER YOU HAVE, IS IT THE SAME AS 171,492.50?

A. YEAH, UNDER HSBC -- ON 23-1 IT SAYS 171,492.0. ON 137 IT
SAYS 171,492.50.

Q. HOW MANY TIMES DOES IT SAY 171,492.50?

A. SIX.

Q. AND HOW MANY TIMES DOES IT SAY ON EXHIBIT 23-1,
171,492.50?

A. SIX.

Q. IT SAYS SIX?

A. YES.

Q. AND DIDN'T YOU CHANGE IT TO A LOWER NUMBER?

A. NO, THAT'S -- UNDER THAT COLUMN IT'S FOR HSBC STATEMENT
THAT'S WHAT I HAVE.

Q. YOU HAVE COMPLETELY THE SAME NUMBER ALL OF THE WAY
THROUGH?

A. YES.

Q. ALL RIGHT. THEN I MUST HAVE A DIFFERENT VERSION THAT WAS
GIVEN TO ME BECAUSE MINE SAYS --

MAY I APPROACH THE WITNESS, YOUR HONOR?

THE COURT: YES, WITH COUNSEL. DO YOU WANT TO LOOK
AT THE DOCUMENT? IS THAT WHAT YOU WANT?

MR. SCHAINBAUM: YES.

THE COURT: WHY DON'T YOU LOOK AT MS. SISKIND'S

CROSS EXAMINATION
DOCUMENT.

MS. SISKIND: IT'S IN EVIDENCE AND IT WAS ON THE
SCREEN -- OR IT'S A DEMONSTRATIVE.

THE COURT: WHAT NUMBER IS IT?

MS. SISKIND: 23-1.

MR. SCHAINBAUM: THE ONE I HAVE IS 23-1 AND IT HAS
DIFFERENT NUMBERS. THIS ONE HAS DIFFERENT NUMBERS.

THE WITNESS: THE ONE THAT I'M LOOKING AT, IT HAS
ALL SIX OF THOSE SAME NUMBERS.

MR. SCHAINBAUM: ALL RIGHT. WELL, MINE HAS
DIFFERENT NUMBERS. I'LL JUST MOVE ON.

Q. WHEN YOU CALCULATED THE INTEREST, HOW DID YOU CALCULATE
THE INTEREST?

A. I DID IT BY LOOKING AT THE START AND MATURITY DATE TO
FIGURE OUT HOW LONG IT LASTED; I LOOKED AT THE PRINCIPAL; I
USED THE INTEREST RATE; I CAME UP -- THROUGH AN EXCEL
SPREADSHEET FORMULA THING, I CAME UP WITH AN AMOUNT.

AND THEN IF IT WAS IN A FOREIGN CURRENCY, I USED THE
EXCHANGE RATE.

Q. AND HOW DID YOU COMPOUND THE INTEREST? WAS IT QUARTERLY?
DAILY? ANNUALLY?

A. I BELIEVE IT WAS DONE DAILY.

Q. AND WHERE DO YOU FIND THE JUSTIFICATION FOR DOING IT
DAILY?

A. THAT WAS THE METHOD THAT I USED.

Q. BUT WAS THAT THE METHOD THAT THE HSBC BANK SUPPOSEDLY
COMPOUNDED THE INTEREST ANNUALLY?

A. THAT THEY FOUNDED IT ANNUALLY?

Q. YES.

A. WELL, NO. IF YOU COMPOUND IT ANNUALLY -- YOU MEAN JUST
DO -- INSTEAD OF DOING IT DAY AFTER DAY AFTER DAY, THEY'RE ONLY
GOING TO MULTIPLY IT BY THE INTEREST RATE AT THE MATURITY TERM?

Q. YES.

A. I DIDN'T DO THAT.

Q. THE COMPOUNDING DAILY IS AN I.R.S. FORMULA; CORRECT?

A. WELL, IT'S A FORMULA IN THE EXCEL SPREADSHEET THAT I USE.

Q. AND THAT FORMULA IS THE I.R.S. FORMULA THAT IS ON THE
I.R.S. COMPUTER; CORRECT?

A. NO, I DIDN'T USE THAT. I USED AN EXCEL SPREADSHEET
FORMULA.

Q. WHEN YOU USE AN EXCEL SPREADSHEET, DOESN'T THE I.R.S.,
WHEN THEY'RE COMPOUNDING INTEREST, COMPOUND INTEREST DAILY?

A. YEAH, WE DO DO IT DAILY.

Q. AND SO THAT'S THE METHOD THAT YOU USED?

A. I COMPOUNDED IT DAILY. I DID NOT USE AN I.R.S. FORMULA.
I USED A FORMULA IN AN EXCEL SPREADSHEET.

Q. AND WOULD COMPOUNDING ANNUALLY RESULT IN A LOWER NUMBER
THAN IF YOU COMPOUNDED DAILY?

A. I BELIEVE SO.

Q. SO YOUR METHOD INHERENTLY RESULTS IN A LARGER NUMBER;

CROSS EXAMINATION

1 CORRECT?

2 A. IT RESULTED IN WHAT I FELT WAS AN ACCURATE OR AT LEAST A
3 FAIR ESTIMATION OF AN AMOUNT.

4 Q. WHEN YOU SAY "IT RESULTED IN WHAT I THOUGHT WAS A FAIR
5 ESTIMATION," AND IT'S YOUR THOUGHT, AND NOT NECESSARILY BASED
6 ON THE EVIDENCE?

7 A. NO. I BELIEVE I FOLLOWED THE EVIDENCE.

8 Q. SO YOU BELIEVE YOU FOLLOWED THE EVIDENCE AND COMPOUNDED
9 DAILY AND CAME UP WITH A LARGER FIGURE THAN WHAT THE BANK
10 COMPOUNDS?

11 A. WELL, NO. WHAT I DID WAS I USED THE LOWER OF THE TWO
12 AMOUNTS. WHETHER IT WAS FROM THE HSBC STATEMENT OR FROM MY
13 CALCULATION, I USED THE LOWER OF THE TWO.

14 Q. YOU USED THE LOWER OF THE TWO, EVEN THOUGH YOU COMPOUNDED
15 DAILY?

16 A. SIR, IF YOU LOOK AT 23-1, OKAY, AND YOU LOOK AT HOW THE
17 NUMBER THAT I CAME UP WITH, WHICH IS 4 -- LET'S TAKE THE VERY
18 FIRST LINE. 4,282.37. WHAT THE HSBC STATEMENT SAID WAS
19 \$4,246.15.

20 NOW, I USED THE LOWER FIGURE, BUT THE POINT THAT I'M
21 MAKING IS THAT THERE IS ONLY A \$36 DIFFERENCE.

22 SO IF THERE WAS A \$36 DIFFERENCE, THAT TELLS ME THAT MOST
23 LIKELY, AND I HAVE TO BELIEVE, THAT WITH ONLY A \$36 DIFFERENCE,
24 THAT THE METHOD THAT I'M USING IS VERY CLOSE TO WHAT HSBC USED.

25 Q. BUT IT'S NOT THE METHOD THAT THEY USED?

1 A. ALL I COULD TELL YOU IS THAT MY NUMBERS ARE VERY CLOSE TO
2 THEIRS BECAUSE MY NUMBERS REPRESENT A, YOU KNOW, A VERY CLOSE
3 APPROXIMATION TO THEIRS. THAT IS THE REASON THAT I USE THEM.

4 Q. AND WHEN YOU SAY "THAT," ARE YOU ALSO SAYING THAT YOU
5 DIDN'T FIX THE EVIDENCE?

6 A. FIXING THE EVIDENCE IMPLIES THAT SOMEHOW I'M MANIPULATING
7 OR WHATEVER IN SOME BAD WAY. I DON'T FIX EVIDENCE. I
8 SUMMARIZE EVIDENCE.

9 SO WHAT I DID WAS THAT I TOOK THE EVIDENCE, I PUT IT INTO
10 A CALCULATION.

11 WHERE THERE ARE DISCREPANCIES BETWEEN EVIDENCE, I CHOSE TO
12 USE THE SCREEN SHOT, AND AS I HAVE SAID SO MANY TIMES BEFORE,
13 THAT IS HOW I CAME UP WITH MY CALCULATION OF INTEREST INCOME.

14 Q. AND SO YOU USE THE SCREEN SHOT WHICH IS SOME KIND OF A
15 REFERENCE FROM A COMPUTER LOCATED 8000 MILES AWAY IN INDIA, AND
16 YOU BELIEVE THAT'S ACCURATE?

17 A. THAT IS WHAT IS IN EVIDENCE, SIR.

18 Q. AND --

19 A. IF IT'S IN EVIDENCE, I USE IT. AND IF THERE IS A
20 DISCREPANCY BETWEEN THE EVIDENCE, I FELL BACK ON THE SCREEN
21 SHOT.

22 Q. AND AFTER YOU FELL BACK ON THE SCREEN SHOT, YOU MADE
23 FURTHER ADJUSTMENTS BY MANIPULATING THE EVIDENCE TO COME OUT
24 WITH WHAT YOU BELIEVED IS FAIR?

25 A. I DO NOT MANIPULATE EVIDENCE. I SUMMARIZE EVIDENCE.

CROSS EXAMINATION

1 THERE'S A BIG DIFFERENCE, OKAY.

2 WHAT THE EVIDENCE SHOWS IS WHAT I USE.

3 NOW, I --

4 Q. WHEN YOU SAY WHAT THE EVIDENCE SHOWS, THAT'S WHAT YOU
5 USED, YOU JUST TESTIFIED THAT WHEN YOU FOUND THERE WAS A
6 DISCREPANCY, YOU SAID YOU MADE WHAT YOU THINK WAS THE BETTER
7 AMOUNT AND USED THAT.

8 A. WELL, IF THERE IS A DISCREPANCY, THEN I HAVE TO DECIDE IN
9 ORDER TO DO A CALCULATION WHICH ONE WOULD BE CORRECT, OKAY.

10 OKAY. NOW, HOLD ON. IN ORDER TO DO THE CALCULATION, THAT
11 IS WHAT I HAVE TO DO. THAT'S WHAT I'M SUPPOSED TO DO.

12 SO USING THAT EVIDENCE I DID MY CALCULATION THE WAY I HAVE
13 EXPLAINED SO MANY TIMES.

14 Q. NOW, WHEN YOU TALK ABOUT SO MANY TIMES, LET ME ASK YOU
15 THIS QUESTION: HOW LONG HAVE YOU BEEN WORKING ON THIS CASE?

16 A. OVER A YEAR.

17 Q. AND HOW MANY CALCULATIONS AND VARIATIONS HAVE YOU MADE OF
18 YOUR SUMMARY NUMBERS?

19 A. I DON'T KNOW. AS I RECEIVED MORE INFORMATION, I WOULD
20 REVISE MY NUMBERS ACCORDINGLY.

21 Q. DID YOU -- IF YOU WOULD BE KIND ENOUGH TO TURN TO
22 EXHIBITS -- LET'S START WITH EXHIBIT TRIPLE O.

23 YOUR HONOR, FOR HOUSEKEEPING, DID I MOVE GG-2 IN EVIDENCE?

24 MS. SISKIND: I BELIEVE HE DID, YOUR HONOR.

25 THE COURT: IT WAS RECEIVED WITHOUT OBJECTION.

CROSS EXAMINATION

1 MR. SCHAINBAUM: THANK YOU.

2 THE WITNESS: OKAY. I'M SORRY. WHICH EXHIBIT DID
3 YOU WANT ME TO LOOK AT?

4 BY MR. SCHAINBAUM:

5 Q. THE ONE THAT IS CALLED OOO, TRIPLE O?

6 A. TRIPLE O.

7 THE COURT: BEFORE YOU DO THAT, LET'S JUST LET OUR
8 JURY STAND UP AND STRETCH FOR JUST A MOMENT.

9 MR. SCHAINBAUM: OKAY.

10 THE COURT: FOLKS, IF YOU WANT TO STAND UP AND
11 STRETCH IN OUR BOX, JUST GO RIGHT AHEAD.

12 MR. SCHAINBAUM.

13 BY MR. SCHAINBAUM:

14 Q. THANK YOU. IS TRIPLE O SOMETHING YOU HAVE SEEN BEFORE?

15 A. YES.

16 Q. AND IS THAT YOUR WORK?

17 A. YES.

18 Q. AND WHEN DID YOU CREATE THIS WORK?

19 A. THIS IS APRIL 29, 2013.

20 Q. AND ON THIS PARTICULAR DOCUMENT, WHICH CONSISTS OF
21 TWO PAGES, ARE THERE NOTES AT THE END OF THE DOCUMENT?

22 ACTUALLY IT'S THREE PAGES. I STAND CORRECTED.

23 A. I ONLY HAVE TWO.

24 Q. AND IF YOU WOULD TURN TO -- I THOUGHT I HAD TWO, BUT
25 THERE'S ANOTHER PAGE.

CROSS EXAMINATION
1 A. OH, SORRY.

2 Q. YEAH, YOU AND I HAVE THE SAME MISTAKE. THERE ARE
3 THREE PAGES HERE.

4 A. OKAY.

5 Q. THE FOOTNOTES AT THE END?

6 MS. SISKIND: OBJECTION TO THE CONTENTS OF THE
7 DOCUMENT.

8 MR. SCHAINBAUM: OKAY. I MOVE THIS DOCUMENT IN
9 EVIDENCE.

10 MS. SISKIND: AND, YOUR HONOR, WE OBJECT TO THIS
11 EVIDENCE.

12 THE COURT: MAY WE HAVE A SIDE-BAR WITH COUNSEL FOR
13 JUST A MOMENT?

14 MS. SISKIND: SURE.

15 (SIDE-BAR CONFERENCE ON THE RECORD.)

16 THE COURT: WE'RE AT SIDE-BAR.

17 MS. SISKIND.

18 MS. SISKIND: YOUR HONOR, THIS WITNESS WAS CALLED AS
19 A SUMMARY WITNESS, WHICH MEANS HE'S SUMMARIZING THE EVIDENCE
20 INTRODUCED AT TRIAL.

21 THE DATE ON THIS SPREADSHEET, APRIL 29, 2013, PREDATES OUR
22 TRIAL DATE BY SOME TIME. THESE MAY BE PRELIMINARY COMPUTATIONS
23 HE DID, BUT THE COMPUTATIONS THAT THE JURY SHOULD CONSIDER ARE
24 THOSE THAT ACTUALLY SUMMARIZE THE EVIDENCE THAT CAME IN AT
25 TRIAL.

CROSS EXAMINATION

1 FOR ALL WE KNOW THERE WERE REFERENCES IN THESE TWO
2 EXHIBITS THAT THEY HAVEN'T SEEN. IN FACT, I'M FAIRLY CONFIDENT
3 THAT THERE ARE REFERENCES IN THESE TWO EXHIBITS THAT THEY
4 HAVEN'T SEEN, PARTICULARLY THE BATES NUMBERS ON THE NEXT PAGE.
5 I DON'T KNOW IF THEY'RE ALL IN EVIDENCE.

6 AND CERTAINLY THE FACT THAT HE MAY HAVE HAD PRIOR DRAFTS
7 MAY BE FOR QUESTIONING, BUT FOR THE JURY TO SEE THE
8 CALCULATIONS THAT PREDATES TRIAL AND PREDATES EVIDENCE BEING
9 PRESENTED THAT THIS WITNESS IS SUMMARIZING WOULD BE
10 INAPPROPRIATE.

11 MR. SCHAINBAUM: YOUR HONOR, HE IS SUMMARIZING THE
12 SAME EVIDENCE AND THE JURY -- IT GOES TO THE WEIGHT. THEY HAVE
13 A RIGHT TO CONSIDER EVERYTHING THAT GOES INTO HIS TESTIMONY,
14 AND THIS IS PART OF HIS TESTIMONY AS REVISED.

15 AND WHAT THE GOVERNMENT DOESN'T WANT IS THE FOOTNOTES AT
16 THE SECOND AND THIRD PAGE WHICH TELL YOU THE SOURCE OF ALL THIS
17 AND POINT OUT THE UNRELIABILITY OF THIS INFORMATION AND THAT'S
18 WHY THE GOVERNMENT KEEPS REVISING.

19 BUT THE JURY CAN GIVE IT WHATEVER WEIGHT THEY WANT. THEY
20 CAN SAY HE'S A VERY EFFICIENT, DEDICATED PERSON WHO CHANGES THE
21 WORK PRODUCT TO THE LAST FINAL --

22 THE COURT: EXCUSE ME. LET ME ASK, WHAT IS TRIPLE
23 O, THE THREE PAGES, WHAT IS THIS?

24 MR. SCHAINBAUM: THIS IS HIS WORK ON THE NUMBERS,
25 WHAT HE BELIEVES -- I'LL HAVE TO LOOK AT THE HEADING. LET ME

CROSS EXAMINATION

1 GET MY MAGNIFYING GLASSES.

2 THE COURT: IS THIS HIS WORK PRODUCT OR CALCULUS OF
3 SOME OF THESE ACCOUNTS? IS THAT ACTUALLY WHAT THIS IS?

4 MR. SCHAINBAUM: THESE ARE EXHIBITS ACTUALLY GIVEN
5 TO US AND THAT'S WHAT WE HAVE, AND ALONG THE WAY HE HAS SAID
6 THIS IS WHAT HIS CALCULATION WAS AND THEN THEY KEEP CHANGING.

7 THE COURT: WHY DON'T YOU TELL ME?

8 MS. SISKIND: I THINK THIS WAS TURNED OVER EITHER AS
9 JENCKS OR AS A PRELIMINARY COMPUTATION.

10 BUT HE WAS NOT ASKED ANY QUESTIONS ON DIRECT ABOUT
11 COMPUTATIONS DONE BEFORE SEEING ALL OF THE EVIDENCE.

12 WHAT I'M MOST CONCERNED ABOUT IS NOT ONLY THE DATE, BUT I
13 DON'T KNOW -- THESE ARE ALL BATES REFERENCES IN THE FOOTNOTES.
14 THIS WAS MADE BEFORE DOCUMENTS CAME INTO EVIDENCE.

15 I DON'T KNOW IF ALL OF THOSE CAME INTO EVIDENCE. IF THEY
16 DIDN'T, IT'S NOT APPROPRIATE BECAUSE HE'S SUPPOSED TO SUMMARIZE
17 THE EVIDENCE. AND HERE HE MAY BE TAKING INTO ACCOUNT THINGS
18 THAT DIDN'T COME INTO EVIDENCE, WHICH IS GOING TO GIVE A
19 DIFFERENT IMPRESSION OF HIS CALCULATIONS.

20 MR. SCHAINBAUM: I DON'T BELIEVE HE DID.

21 BUT ANOTHER POINT IS THAT IT TOOK HIM SO LONG TO DO THESE
22 CALCULATIONS, IT'S ANOTHER EXAMPLE OF, YOU KNOW, THEY'RE
23 CHARGING THE CLIENT WITH FAILURE TO REPORT INTEREST AND THE
24 CALCULATIONS ARE SO COMPLICATED IT TOOK HIM SO LONG.

25 SO THE JURY CAN LOOK AT THIS AND SAY, HERE'S SUPPOSEDLY AN

1 EXPERT, QUOTE-UNQUOTE --

2 THE COURT: I THINK YOU'LL BE ENTITLED TO ASK HIM
3 HOW LONG IT TOOK HIM TO DO THE CALCULATIONS, BUT THE ACTUAL
4 WORK PRODUCT AND HIS NOTES LEADING UP TO THE CALCULATIONS --

5 MR. SCHAINBAUM: BUT THAT'S IMPORTANT.

6 THE COURT: BUT WHAT IS THE RELEVANCE OF HIS WORK
7 UNTIL HE DEVELOPS THE ULTIMATE NUMBERS?

8 MR. SCHAINBAUM: THE RELEVANCE OF HIS WORK IS TO
9 SHOW THAT A PERSON LIKE MR. DESAI'S LACK OF WILLFULNESS AND
10 SHOWS HOW UNRELIABLE ALL OF THIS INFORMATION IS.

11 FIRST HE SAYS HSBC MADE ERRORS, AND THEN THE SPECIAL AGENT
12 MADE ERRORS, AND THEN HE CORRECTED THEM ALL.

13 SO IT GOES TO SHOW THE COMPLEXION -- I MEAN, THEY'RE
14 SAYING IN THE SUMMARIES THAT THEY PUT IN THAT I OBJECTED TO,
15 LOOK, THERE'S A MILLION SOMETHING THAT HE DIDN'T REPORT.

16 IT'S NOT THAT SIMPLE. IT'S SO COMPLICATED THAT THIS IS
17 EVIDENCE OF THE COMPLICATIONS.

18 MS. SISKIND: FIRST, I DON'T THINK IT -- AS YOUR
19 HONOR WELL KNOWS, WE HAD MULTIPLE TRIAL DATES IN THIS CASE, SO
20 THE FACT THAT THERE'S AN EARLIER DATE ON HERE I THINK IS WHEN
21 WE WERE PREPARING FOR AN EARLIER TRIAL, NOT THAT HE'S BEEN
22 WORKING ON CALCULATIONS. IT DOESN'T SAY HOW LONG HE WAS
23 WORKING ON IT. IT'S JUST THAT WE WERE PREPARING FOR TRIAL AT
24 EARLIER POINTS IN TIME.

25 BUT HE'S HERE TO SUMMARIZE THE EVIDENCE THAT CAME INTO

CROSS EXAMINATION

1 TRIAL, NOT THE THINGS THAT THE JURY HAS NOT SEEN AND CAN'T RELY
2 ON, AND THAT'S THE PROBLEM WITH THIS CHART. WHEN HE MADE IT HE
3 WAS IN A POSITION TO RELY ON A WHOLE UNIVERSE OF DOCUMENTS THAT
4 WE MIGHT NOT HAVE DECIDED TO PUT INTO EVIDENCE AND THAT THE
5 JURY MAY NOT HAVE SEEN.

6 MR. SCHAINBAUM: BUT THE EVIDENCE IS IN THE RECORD.
7 I HAVE ALREADY COMPLAINED THAT IT'S INACCURATE AND INCOMPETENT
8 AND HE NOTED THAT IN THE FOOTNOTE.

9 THE COURT: SO YOU CAN ASK HIM ABOUT THE WORK HE HAS
10 DONE AS YOU'RE EXAMINING ON HIS CALCULATIONS, HIS THOUGHTS, HOW
11 HE PUT IT TOGETHER. YOU CAN CERTAINLY ASK HIM, ABOUT HOW LONG
12 DID IT TAKE YOU? WHETHER THERE WERE ERRORS? DID YOU MAKE
13 ERRORS? IS IT DIFFICULT? YOU CAN GET THAT IN THROUGH HIM.

14 BUT GETTING IN HIS NOTES OF THINGS THAT ARE NOT PART OF
15 THE SUMMARY, I'M NOT GOING TO LET YOU DO THAT BECAUSE THAT'S
16 LIKE GETTING IN ALL OF THE WORK THAT YOU DID BEFORE THAT MAY OR
17 MAY NOT BE RELEVANT TO THE ACTUAL NUMBER THAT HE DID.

18 NOW, YOU CAN CERTAINLY ASK HIM, WAS IT DIFFICULT? DID YOU
19 MAKE MISTAKES? YOU CAN TALK TO HIM ABOUT HOW LONG IT TOOK HIM
20 TO GET THE CALCULATIONS, THOSE TYPES OF THINGS.

21 BUT GETTING IN THE EXACT -- TO THESE THREE PAGES, I'M NOT
22 GOING TO ALLOW THIS TO COME IN.

23 MR. SCHAINBAUM: OKAY. ONE FURTHER POINT. I TAKE
24 EXCEPTION TO WHAT YOU'RE SAYING, BUT BECAUSE WE'RE TALKING
25 ABOUT WILLFULNESS IN A COMPLICATED COMPLEX TAX CASE AND THEY'RE

1 BASICALLY SAYING UNREPORTED INTEREST INCOME AS IF YOU ADD HOT
2 WATER AND YOU GET INSTANT COFFEE. THIS SHOWS YOU THAT IT TAKES
3 SUCH EFFORT IN COMPLICATIONS THAT EVEN SOMEONE WHO IS TRAINED
4 TO DO THIS KIND OF WORK HAD A HARD TIME AND DIDN'T GET IT
5 RIGHT.

6 THE COURT: I'M NOT PRECLUDING YOU FROM ASKING HIM
7 THAT. YOU CAN CERTAINLY ASK HIM THAT.

8 MR. SCHAINBAUM: BUT I THINK IT WOULD BE IMPORTANT
9 TO SHOW TO THE JURY HOW COMPLICATED IT IS AND HOW --

10 THE COURT: I THINK YOU CAN GET THAT FROM HIS
11 TESTIMONY AND ASK HIM ABOUT COMPLICATIONS AND YOU CAN ASK HIM.
12 AND IF HE SAYS I DON'T REMEMBER, YOU CAN CERTAINLY USE THIS TO
13 REFRESH HIS RECOLLECTION ABOUT HOW COMPLICATED IT IS.

14 BUT THE DOCUMENT DOESN'T COME IN. YOU CAN CERTAINLY ASK
15 HIM ABOUT THAT.

16 MR. SCHAINBAUM: OKAY.

17 THE COURT: AND THESE OTHER ITEMS --

18 MR. SCHAINBAUM: WELL, I TAKE EXCEPTION FOR THE
19 RECORD.

20 BY THE WAY, WHEN DO YOU PLAN TO TAKE A BREAK?

21 THE COURT: WE'LL TAKE A BREAK AT 3:00 O'CLOCK,
22 ANOTHER 12 MINUTES.

23 MR. SCHAINBAUM: OKAY.

24 (END OF DISCUSSION AT SIDE-BAR.)

25 THE COURT: THANK YOU, COUNSEL.

CROSS OERTEL

1 BY MR. SCHAINBAUM:

2 Q. MR. OERTEL --

3 THE COURT: FOR THE RECORD, I'M SUSTAINING THE
4 OBJECTION. PARDON ME.

5 MR. SCHAINBAUM: OKAY. AND YOU'VE NOTED MY
6 EXCEPTION?

7 THE COURT: ABSOLUTELY.

8 MR. SCHAINBAUM: THANK YOU.

9 Q. NOW, MR. OERTEL, YOU HAVE HAD SEVERAL COMPUTATIONS TO COME
10 TO THE COMPUTATION THAT YOU'RE USING IN THIS -- AT THIS TIME;
11 CORRECT?

12 A. YES.

13 Q. AND YOU SAID YOU HAVE BEEN WORKING ON THIS FOR OVER A
14 YEAR?

15 A. WELL, I MEAN, I DON'T DO IT ON A DAILY BASIS, BUT AS
16 SOMETHING HAS COME UP I'VE WORKED ON IT AS NEEDED OVER THE LAST
17 YEAR.

18 Q. AND PUTTING TOGETHER A COMPUTATION FOR WHAT YOU BELIEVE IS
19 UNREPORTED INTEREST INCOME, DID YOU FIND THAT IT WAS A COMPLEX,
20 COMPLICATED PROCESS?

21 A. NO.

22 Q. IT WAS NOT A COMPLEX, COMPLICATED PROCESS?

23 A. NO.

24 Q. DID YOU EVER MAKE A NOTATION THAT HSBC HAD MADE ERRORS?

25 A. YES.

Q. DID YOU EVER MAKE A NOTATION THAT THE SPECIAL AGENT HAD
MADE ERRORS?

A. IN HIS CALCULATIONS?

Q. YES.

A. LIKE AN INTEREST?

Q. YES.

A. YES.

Q. SO YOU MADE NOTATIONS THAT HSBC, THE BANK MADE ERRORS, AND
THAT THE SPECIAL AGENT MADE ERRORS? AM I RIGHT?

A. I HAVE ALREADY TALKED ABOUT THE ERRORS THAT HSBC HAD MADE.
AND WHENEVER IT COMES TO THE SPECIAL AGENT'S NUMBERS, I
KNOW THAT THERE WAS SOME DISCREPANCIES, AND OFF THE TOP OF MY
HEAD, I DON'T REMEMBER WHAT THEY WERE.

Q. I SEE. HOW ABOUT THE REVENUE AGENT, THAT'S YOU, DID YOU
MAKE DISCREPANCIES?

A. DID I MAKE MISTAKES?

Q. YES.

A. YES, AND I -- I AM HOPING THAT I FIXED ALL OF THEM.

Q. THAT'S NOT LIKE FIXING THE EVIDENCE, IS IT?

A. CORRECTING AN ERROR IS NOT MANIPULATING EVIDENCE, SIR.

Q. ALL RIGHT. SO YOU BELIEVE THAT, NOTWITHSTANDING THE
ERRORS OF THE BANK, THE SPECIAL AGENT, AND YOUR OWN, YOU HAVE A
CORRECT COMPUTATION?

A. THAT IS MY TESTIMONY, YES.

Q. ALL RIGHT. THAT IS YOUR TESTIMONY.

CROSS EXAMINATION

1 OKAY. AND EVEN USING AN INTEREST CALCULATION ON A DAILY
2 BASIS, COMPOUNDED DAILY, YOU BELIEVE THAT THAT'S A CORRECT
3 ANALYSIS, ALTHOUGH THE BANK USES AN ANNUAL COMPUTATION.

4 A. I -- WHERE DOES IT SAY THAT THE BANK USES AN ANNUAL
5 COMPUTATION?

6 Q. HAVE YOU LOOKED AT THE RECORDS?

7 A. YES. IS THERE SOMETHING THAT I DIDN'T SEE?

8 Q. I BELIEVE --

9 (PAUSE IN PROCEEDINGS.)

10 BY MR. SCHAINBAUM:

11 Q. DID YOU SEE ANY RECORDS THAT SAID THAT THE BANK USED
12 QUARTERLY COMPUTATIONS?

13 A. HONESTLY, I DON'T REMEMBER ALL OF THE PIECES OF THE
14 EVIDENCE.

15 IF YOU COULD POINT OUT SOMETHING, IT WOULD HELP.

16 Q. OKAY. AT THIS MOMENT I CANNOT. I HAVE TO -- MAYBE AFTER
17 THE BREAK I WILL COME BACK WITH AN ANSWER.

18 A. SURE.

19 Q. IF YOU LOOK AT EXHIBIT 9? DO YOU HAVE EXHIBIT 9 BEFORE
20 YOU?

21 A. YES.

22 Q. AND DO YOU SEE ON EXHIBIT 9 -- WHEN YOU WERE LOOKING AT
23 YOUR EVIDENCE FOR THE FBARS, DID YOU SEE THAT EXHIBIT 9
24 CONTAINS SOME INSTRUCTIONS?

25 A. YES.

CROSS EXAMINATION

1 Q. AND DO YOU SEE ON THE SECOND PAGE UNDER EXCEPTIONS --

2 THE COURT: DO YOU WANT THIS DISPLAYED,
3 MR. SCHAINBAUM?

4 MR. SCHAINBAUM: YES, OKAY.

5 THE COURT: CAN WE DO THAT? THANK YOU.
6 BY MR. SCHAINBAUM:

7 Q. AND DO YOU SEE THE LAST PARAGRAPH OF THE EXCEPTIONS?

8 A. THE LAST PARAGRAPH?

9 Q. CORRECT.

10 A. WHERE IT STARTS "REPORT ANY"?

11 Q. RIGHT. DO YOU SEE THAT PARAGRAPH?

12 A. YES.

13 Q. AND DO YOU SEE THE LAST SENTENCE?

14 A. YES.

15 Q. DO YOU WANT TO READ THAT?

16 A. "DO NOT REPORT ANY ACCOUNT MAINTAINED WITH A BRANCH,
17 AGENCY OR OTHER OFFICE OF A FOREIGN BANK OR OTHER CONSTITUTION
18 THAT IS LOCATED IN THE UNITED STATES, GUAM, PUERTO RICO, AND
19 THE VIRGIN ISLANDS."

20 Q. NOW, YOU HEARD THAT EVIDENCE WHEN THE FINCEN
21 REPRESENTATIVE READ THAT INTO THE RECORD?

22 A. YES.

23 Q. AND WHEN YOU MADE YOUR CALCULATIONS, DID YOU GIVE ANY
24 CONSIDERATION TO THAT EXCEPTION?

25 A. NO. I USED THE DEFINITIONS.

Q. THE DEFINITIONS? IS THAT NOT FROM THE I.R.S. REGS?

A. IS NOT WHAT FROM THE I.R.S. REGS?

Q. THE EXCEPTION, DO NOT REPORT ANY ACCOUNT MAINTAINED WITH A
BRANCH, AGENCY OR OTHER OFFICE OF A FOREIGN BANK OR OTHER
CONSTITUTION THAT IS LOCATED IN THE UNITED STATES, GUAM,
PUERTO RICO, AND THE VIRGIN ISLANDS.

A. I'M ASSUMING IT'S FROM A STATUTE OR REGULATION, YES.

Q. RIGHT. AND SO DID YOU GIVE ANY CONSIDERATION TO THAT?

A. NO, I DID NOT.

Q. JUST ONE SECOND, PLEASE.

WOULD YOU BE KIND ENOUGH TO TURN TO ITEM NUMBER 22 OF THIS
EXHIBIT, WHICH IS HEADED UP ACCOUNT VALUATION?

A. ITEM 22?

Q. RIGHT, ACCOUNT VALUATION. IT'S ON PAGE 4.

A. YES.

Q. NOW, COULD YOU TELL US AGAIN HOW YOU CONVERTED THE FOREIGN
CURRENCY?

A. I USED AN ONLINE SOURCE.

Q. AND WHAT WAS THE NAME OF THAT SOURCE?

A. OANDA.

Q. AND WHAT PERIOD OF TIME DID YOU USE TO MAKE THE
CONVERSION?

A. TO CONVERT WHICH PART?

Q. ANY PART. WHEN YOU WERE CONVERTING, LET'S SAY, INDIA
RUPEES TO U.S. DOLLARS, WHAT WAS THE PERIOD OF TIME THAT YOU

CROSS EXAMINATION
1 USED FOR THE CONVERSION?

2 A. I USED THE DATE AT ISSUE IN THAT TRANSACTION.

3 Q. WHEN YOU WERE CONVERTING EUROS TO U.S. DOLLARS USING,
4 WHAT, THE OANDA SYSTEM, WHAT DATE DID YOU USE?

5 A. I WOULD HAVE USED THE DATE FOR WHATEVER THE TRANSACTION
6 WAS.

7 Q. WHAT DOES THAT MEAN?

8 A. WELL, LIKE IF SOMETHING MATURED ON, LET'S SAY,
9 SEPTEMBER 20TH, I LOOKED AT THE EXCHANGE RATE FOR THAT DAY,
10 SEPTEMBER 20TH FOR WHICHEVER YEAR.

11 Q. AND WHAT WAS YOUR BASIS FOR USING THAT KIND OF CRITERIA?

12 A. WELL, IF IT HAPPENED ON A CERTAIN DAY, I USED THAT DAY.

13 Q. WHY?

14 A. BECAUSE THE DAYS WOULD MATCH.

15 Q. WHAT WAS THE AUTHORITY FOR USING THAT DATE?

16 A. COMMON SENSE.

17 Q. COMMON SENSE?

18 A. YES.

19 Q. ALL RIGHT.

20 A. IF SOMETHING HAPPENED ON A CERTAIN DAY, I USED THAT DAY.

21 Q. NOW, DID YOU HAVE IN MIND AT THE TIME THAT YOU WERE USING
22 COMMON SENSE THE FORM TD F 90-22.1, TD F 90-22.1, BETTER KNOWN
23 AS THE FBAR?

24 A. I USED THE FBAR, YES.

25 Q. SO WHAT IS IN PART IS COUNT 6, 7, AND 8 IS WHETHER OR NOT

1 AN FBAR WAS REQUIRED TO BE FILED AND WHETHER OR NOT IT WAS
2 WILLFUL TO NOT FILE?

3 MS. SISKIND: OBJECTION, YOUR HONOR. IT'S GOING
4 THROUGH THE COUNTS OF THE CRIME.

5 MR. SCHAINBAUM: I DIDN'T FINISH THE QUESTION.

6 THE COURT: WHY DON'T YOU FINISH THE QUESTION,
7 MR. SCHAINBAUM?

8 MR. SCHAINBAUM: OKAY.

9 Q. SO DID YOU REFER TO THE FBAR IN DETERMINING WHICH DATE TO
10 USE FOR THE CONVERSION?

11 A. I BELIEVE SO.

12 Q. OKAY. IF YOU WOULD LOOK AT ITEM 22 CALLED ACCOUNT
13 VALUATION?

14 A. OKAY.

15 Q. DO YOU SEE THAT FIRST PARAGRAPH?

16 A. YES.

17 Q. AND DO YOU SEE IN THE MIDDLE OF THE FIRST PARAGRAPH
18 THERE'S THE WORDS "CONVERT FOREIGN CURRENCY"?

19 A. UH-HUH.

20 Q. AND WHAT DOES THAT SAY?

21 A. "CONVERT FOREIGN CURRENCY BY USING THE OFFICIAL EXCHANGE
22 RATE AT THE END OF THE YEAR."

23 Q. DID YOU DO THAT?

24 A. I USED IT ON THE DATE OF THE TRANSACTION.

25 Q. BECAUSE YOU WERE USING COMMON SENSE?

CROSS OERTEL

1 A. I -- THAT IS HOW I DID IT.

2 Q. BECAUSE YOU WERE USING COMMON SENSE AND NOT WHAT WAS
3 REQUIRED BY THE FBAR?

4 A. I USED THE EXCHANGE RATE, THAT I DID ON THE DATE OF THE
5 TRANSACTION.

6 SO IF SOMETHING MATURED ON A CERTAIN DATE, I USED THAT
7 DATE.

8 Q. AND THAT'S NOT WHAT THE FBAR REQUIRES; CORRECT?

9 A. IT STATES AT THE END OF THE YEAR.

10 Q. OKAY.

11 YOUR HONOR, THIS MAY BE A GOOD TIME TO HAVE THE RECESS.

12 THE COURT: ALL RIGHT. WE'LL DO THAT.

13 MR. SCHAINBAUM: THANK YOU, YOUR HONOR.

14 THE COURT: WE'LL HAVE OUR AFTERNOON RECESS, LADIES
15 AND GENTLEMEN. IT'S 15 MINUTES.

16 (RECESS FROM 2:58 P.M. UNTIL 3:18 P.M.)

17 THE COURT: WE'RE BACK ON THE RECORD. ALL PARTIES
18 PREVIOUSLY PRESENT ARE PRESENT ONCE AGAIN.

19 MR. SCHAINBAUM, WOULD YOU LIKE TO CONTINUE WITH YOUR
20 EXAMINATION?

21 MR. SCHAINBAUM: YES.

22 Q. MR. OERTEL, WOULD YOU BE KIND ENOUGH TO TURN TO
23 EXHIBIT 147, PAGE 6. DO YOU RECALL THIS MORNING MS. SISKIND
24 ASKED YOU A SERIES OF QUESTIONS ABOUT NOTICES RECEIVED FROM THE
25 I.R.S. BY MR. AND MRS. DESAI THAT PERTAIN TO INTEREST?

CROSS EXAMINATION
1 A. YES.

2 Q. AND I THINK YOU GLOSSED OVER CITIBANK, AND I JUST WANTED
3 TO PICK THAT UP THAT THERE IS A REFERENCE TO CITIBANK ON PAGE 6
4 OF 18 OF EXHIBIT 147.

5 DO YOU SEE THAT CITIBANK SINGAPORE LIMITED --

6 THE COURT: 147?

7 MR. SCHAINBAUM: YES, YOUR HONOR. THE EXHIBIT
8 NUMBER IS 147, AND I'M LOOKING AT PAGE 6.

9 THE WITNESS: OKAY. I HAVE THAT.

10 BY MR. SCHAINBAUM:

11 Q. YOU HAVE THAT? DO YOU SEE IN THE SECOND GRID IT SAYS
12 INTEREST?

13 A. ITEM NUMBER 2, YES.

14 Q. AND WHAT IS THE NAME OF THE PAYEE?

15 A. CITIBANK SINGAPORE LIMITED.

16 Q. AND DOES IT HAVE AN ADDRESS, A FOREIGN ADDRESS?

17 A. IT ONLY HAS A PORTION OF THE ADDRESS.

18 Q. AND A PORTION OF THE ADDRESS IS SOME NUMBER 3 TEMASEK
19 AVENUE, 1200 CENTENNIAL TOWER, FIVE ZEROS?

20 A. YES.

21 Q. AND IS THIS A FOREIGN BANK?

22 A. I DON'T KNOW.

23 Q. AND IS SINGAPORE IN THE UNITED STATES?

24 A. NO, IT IS NOT.

25 Q. AND IS CITIBANK SINGAPORE LIMITED A FOREIGN BANK?

CROSS EXAMINATION

1 A. I DON'T KNOW.

2 Q. YOU DON'T KNOW? BUT DO YOU KNOW THAT THEY ISSUED A FORM
3 1099 INTEREST?

4 A. THAT'S WHAT IT SAYS HERE.

5 Q. AND YOU HAVE TESTIFIED THAT FOREIGN BANKS ARE NOT SUPPOSED
6 TO BE ISSUING 1099'S?

7 A. THEY'RE NOT REQUIRED TO.

8 Q. THEY'RE NOT REQUIRED TO?

9 A. YEP.

10 Q. BUT DO YOU SEE THAT THERE'S A CALCULATION OF THE ORIGINAL
11 AMOUNT PUT ON MR. AND MRS. DESAI'S TAX RETURN?

12 A. YES.

13 Q. AND DO YOU SEE THAT THERE'S A CORRECTED AMOUNT?

14 A. THERE'S AN AMOUNT REPORTED TO THE I.R.S., THERE'S AN
15 AMOUNT ON THE RETURN, AND THEN THERE'S A DIFFERENCE.

16 Q. AND DO YOU SEE THAT IT'S A CORRECTED AMOUNT?

17 A. WHAT DO YOU MEAN BY THE "CORRECTED"? THEY ARE WHAT THEY
18 ARE.

19 Q. LET ME ASK YOU THIS: IN YOUR 27 YEARS OF EXPERIENCE, HAVE
20 YOU EVER SEEN A FORM 1099 CORRECTED, THE PAYEE -- EXCUSE ME --
21 THE PAYOR ISSUES A CORRECTED 1099?

22 A. YES, I'VE SEEN THAT.

23 Q. AND HAVE YOU SEEN THEM A LOT?

24 A. A LOT? NO.

25 Q. BUT THEY HAPPEN, DO THEY NOT?

A. I HAVE SEEN THEM HAPPEN, YES.

Q. AND CAN YOU TELL FROM THIS DOCUMENT WHETHER OR NOT
CITIBANK SINGAPORE ISSUED A CORRECTED 1099?

A. THERE'S NOTHING INDICATED ON HERE OTHER THAN WHAT IS
SHOWN.

Q. SO YOU CAN'T TELL IF THEY ISSUED A CORRECTED 1099?

A. THERE IS NO CORRECTED 1099 PUT INTO EVIDENCE.

Q. THE ONLY THING THAT YOU HAVE IS THIS FORM, THIS LETTER
THAT SAYS FORM 1099 INTEREST UNDER ACCOUNT INFORMATION?

A. WELL, IT -- IT SAYS WHAT IT SAYS, YEAH. IT JUST SAYS THAT
THERE'S AN INTEREST IN CITIBANK SINGAPORE. IT GIVES AN AMOUNT
GIVEN TO THE I.R.S.; AN AMOUNT ON THE RETURN; AND A DIFFERENCE.

Q. AND AS YOU SIT HERE TESTIFYING, YOU KNOW FROM THE EVIDENCE
THAT HSBC NEVER ISSUED A 1099?

A. I DID NOT SEE A 1099 PUT INTO EVIDENCE FROM HSBC.

Q. DO YOU KNOW IF CITIBANK SINGAPORE HAD A REPRESENTATIVE
OFFICE IN THE UNITED STATES?

A. I HAVE NO IDEA.

Q. YOU HAVE NO IDEA. IF YOU WOULD TURN TO EXHIBIT 148, PAGE
6. DO YOU SEE ON PAGE 6 A GRID AND IT SAYS INTEREST?

A. YES.

Q. AND WHAT IS THE -- WHO IS THE PAYOR?

A. IT'S THE SAME ONE, CITIBANK SINGAPORE LIMITED WITH THE
SAME ADDRESS.

Q. AND WHAT DO YOU MEAN THE SAME ADDRESS? IS THIS A MORE

CROSS EXAMINATION
1 COMPLETE ADDRESS?

2 A. WELL, IT LOOKS LIKE IT'S THE -- HOLD ON. THIS ONE SAYS
3 3 TEMASEK AVENUE, 1200 CENTENNIAL TOWER, FIVE ZEROS. THIS SAYS
4 3 TEMASEK AVENUE, 1200 CENTENNIAL TOWER, OH, YEAH, SINGAPORE.

5 Q. SO NOW YOU KNOW THAT THE IDENTITY OF THE BANK IS
6 SINGAPORE?

7 A. THAT'S THE ADDRESS GIVEN.

8 THE COURT: CAN YOU SPELL TEMASEK?

9 THE WITNESS: I'M SORRY. T-E-M-A-S-E-K.

10 THE COURT: THANK YOU.

11 BY MR. SCHAINBAUM:

12 Q. NOW, YOU KNOW THAT THIS CITIBANK SINGAPORE ISSUED A 1099;
13 CORRECT?

14 A. CORRECT.

15 Q. AND YOU CAN TELL THAT FROM THIS DOCUMENT?

16 A. YES.

17 Q. AND, NOW, IF I ASKED YOU THIS QUESTION -- MS. SISKIND
18 ASKED YOU A SERIES OF QUESTIONS ABOUT THE TRANSCRIPTS.

19 A. YES.

20 Q. AND YOUR ANSWERS ULTIMATELY WERE THAT EACH TRANSCRIPT FOR
21 EACH YEAR SHOWED A ZERO TAX LIABILITY OWED TO THE UNITED
22 STATES?

23 A. THERE WAS ONE THAT SHOWED A CREDIT BALANCE OF AROUND \$67,
24 BUT THE REST SHOWED A ZERO BALANCE.

25 Q. RIGHT. AND THAT INCLUDED TRANSACTIONS OF ADVANCED PAYMENT

1 TO THE I.R.S. ON ADDITIONAL TAXES OWED?

2 A. CORRECT.

3 Q. NOW, I WANT TO SHOW YOU SOME BLOW UPS BECAUSE YOU
4 TESTIFIED RATHER RAPIDLY TO MS. SISKIND'S QUESTIONS ABOUT WHAT
5 WAS ON SCHEDULE B OF MR. AND MRS. DESAI'S TAX RETURNS. SO IF
6 YOU'LL BEAR WITH ME FOR A MINUTE, I'LL GET THE BLOW UPS.

7 A. SURE.

8 Q. THANK YOU. I APPRECIATE YOUR PATIENCE.

9 WHILE THEY'RE DOING THAT, I WANT TO ASK YOU A QUESTION.
10 ON THE GG-2, YOU AUTHORED THAT AND THERE'S A SENTENCE CALLED
11 THE 2008 INFOLT SHOWED 150 POSTING 5,991.55 AND WHICH IS ALSO A
12 NUMBER WRITTEN ON THE SECOND PAGE OF THE 1040 BY THE PURPLE
13 PENCIL PEOPLE?

14 A. UH-HUH.

15 Q. WHO ARE THE PURPLE PENCIL PEOPLE?

16 A. THE PURPLE PENCIL PEOPLE ARE PEOPLE AT THE CENTER SERVICE
17 WHO GO THROUGH AND LOOK FOR ANY TYPE OF DISCREPANCIES BETWEEN
18 WHAT IS SHOWN ON A TAX RETURN AND WHAT THE CORRECT CALCULATION
19 SHOULD IT BE.

20 THE REASON THAT THEY CALL THEM THE PURPLE PENCIL PEOPLE IS
21 THAT WHENEVER THEY SHOW THE CHANGE ON THE ORIGINAL RETURN, THEY
22 ARE ALLOWED ONLY TO DO IT WITH A PURPLE PENCIL.

23 Q. AND DO THEY DO THAT USING COMMON SENSE?

24 MS. SISKIND: OBJECTION, YOUR HONOR.

25 THE COURT: SUSTAINED.

CROSS OERTEL

1 MR. SCHAINBAUM: I WAS JUST INQUIRING AS TO THEIR
2 METHODOLOGY.

3 THE COURT: HIS METHODOLOGY.

4 MR. SCHAINBAUM: WELL, PERHAPS THERE ARE MORE
5 PEOPLE.

6 THE COURT: I'LL SUSTAIN THE OBJECTION.

7 MR. SCHAINBAUM: ALL RIGHT.

8 THE COURT: DOES THE WITNESS NEED TO SEE THIS?

9 MR. SCHAINBAUM: YES. ACTUALLY IT APPEARS IN THE
10 EXHIBIT 1.

11 THE COURT: OKAY. THANK YOU.

12 MR. SCHAINBAUM: IT'S IN EXHIBIT 1, SCHEDULE B.

13 Q. DO YOU HAVE THAT, MR. OERTEL?

14 A. YES.

15 Q. AND THIS IS JUST TO DISPLAY TO THE JURY.

16 THANK YOU, YOUR HONOR.

17 A. THE 2007 SCHEDULE B?

18 Q. ALL RIGHT. LOOKING AT EXHIBIT 1 OF --

19 MS. SISKIND: YOUR HONOR, WOULD YOU LIKE TO DISPLAY
20 THIS ON THE SCREEN?

21 THE COURT: WOULD THAT BE OF SOME BENEFIT TO YOU,
22 MR. SCHAINBAUM?

23 MR. SCHAINBAUM: SURE.

24 THE COURT: I THINK MR. DEMARTINI AND MR. FROST MAY
25 NOT BE ABLE TO SEE. IT'S ON THE OTHER SIDE.

CROSS OERTEL

1 MR. SCHAINBAUM: OKAY. WE'LL LEAVE THAT UP AND GO
2 ON THE SCREEN AS WELL.

3 THE COURT: IF YOU WANT TO PUT THAT ON THE MIDDLE OR
4 SOMETHING SO THAT THE WHOLE JURY CAN SEE IT.

5 MS. SISKIND: YOUR HONOR, I NOTICE THAT IS NOT
6 REDACTED, WHAT IS BEING DISPLAYED ON THE BLOWUP, WHEREAS OURS
7 THAT IS DISPLAYED ON THE SCREEN IS.

8 THE COURT: THIS IS IN EVIDENCE, I THINK.

9 MS. SISKIND: YES, YOUR HONOR, AND THAT'S A COPY
10 THAT'S UNREDACTED DISPLAYING ALL OF THE DEFENDANT'S BANK
11 ACCOUNT NUMBERS.

12 MR. SCHAINBAUM: SORRY.

13 THE COURT: SEE IF YOU CAN USE THIS CHART.

14 MR. SCHAINBAUM: ALL RIGHT. THANK YOU, YOUR HONOR.

15 THE COURT: YES, OF COURSE.

16 Q. MR. OERTEL, CAN YOU SEE THE PROJECTION UP THERE?

17 A. I CAN'T SEE IT, BUT I CAN SEE THE PAPER COPY IN FRONT OF
18 ME.

19 Q. OKAY. DO YOU SEE ON SCHEDULE B THE REPORTING OF CITIBANK
20 SINGAPORE?

21 A. YES.

22 Q. AND DO YOU SEE TO THE LEFT OF THAT NOTATION THAT PART I
23 THE NOTE FROM THE I.R.S. CAN YOU READ THAT NOTE?

24 A. "IF YOU RECEIVE A FORM 1099-INT FORM 1099-OID, OR
25 SUBSTITUTE STATEMENT FROM A BROKERAGE FIRM, LIST THE FIRM'S

1 NAME AS THE PAYOR AND ENTER THE TOTAL INTEREST SHOWN ON THAT
2 FORM."

3 Q. AND WITH RESPECT TO THAT NOTE, ARE THE ITEMS TO THE RIGHT
4 OF THAT IN COMPLIANCE WITH THAT NOTE ABOUT THE 1099'S?

5 A. WELL, I DON'T KNOW EXACTLY WHAT THE CORRECT AMOUNT SHOULD
6 HAVE BEEN, I MEAN, JUST BY LOOKING AT THIS. I CAN TELL YOU
7 THAT THERE'RE, I THINK, 15 ACCOUNTS NAMED AND 15 AMOUNTS
8 REPORTED.

9 Q. AND ONE ACCOUNT IS CITIBANK SINGAPORE LIMITED; CORRECT?

10 A. THAT'S RIGHT.

11 Q. AND THAT HAS BEEN IDENTIFIED NOW AS A FOREIGN BANK;
12 CORRECT?

13 A. NO. YOU SAID IT WAS A FOREIGN BANK.

14 Q. WELL, DIDN'T YOU READ OFF THE I.R.S. FORM THE ADDRESS IN
15 SINGAPORE?

16 A. THE ADDRESS IS IN SINGAPORE.

17 Q. AND SO WOULD YOU SAY THAT IF THE BANK IS LOCATED IN
18 SINGAPORE, A FOREIGN COUNTRY, IT'S A FOREIGN BANK?

19 A. TYPICALLY THE LOCATION OF THE BANK DICTATES WHETHER OR NOT
20 IT IS FOREIGN, SO YOU'RE CORRECT.

21 Q. OKAY. THANK YOU. NOW, LOOKING AT PART III, FOREIGN
22 ACCOUNT AND TRUST, DO YOU SEE THE ANSWER TO 7(A)?

23 A. YES.

24 Q. AND WHAT IS THE ANSWER?

25 A. THE ANSWER IS "NO."

Q. AND THE ANSWER IS NO.

"AT ANY TIME DURING 2007, DID YOU HAVE AN INTEREST IN OR A SIGNATURE OR OTHER AUTHORITY OVER A FINANCIAL ACCOUNT IN A FOREIGN COUNTRY, SUCH AS A BANK ACCOUNT, SECURITIES ACCOUNT, OR OTHER FINANCIAL ACCOUNT?

SEE PAGE B-2 FOR EXCEPTIONS AND FILING REQUIREMENTS FOR FORM TD F 90-22.1."

DO YOU SEE THAT?

A. YES.

Q. AND SO, IN YOUR 27 YEARS OF EXPERIENCE, DO YOU BELIEVE THAT THIS TAXPAYER WHO PREPARED THIS RETURN AND ENTERED CITIBANK SINGAPORE AND ALSO ANSWERED NO DID IT DELIBERATELY?

MS. SISKIND: OBJECTION, YOUR HONOR.

THE COURT: SUSTAINED.

BY MR. SCHAINBAUM:

Q. DO YOU HAVE AN EXPLANATION?

MS. SISKIND: OBJECTION, YOUR HONOR.

THE COURT: SUSTAINED.

BY MR. SCHAINBAUM:

Q. DO YOU SEE IN ANY OF THE EVIDENCE A LETTER FORM 3800 ISSUED BY THE I.R.S. REGARDING FBARS?

A. THE FORM 3800?

Q. DO YOU KNOW WHAT A FORM 3800 IS?

A. THAT'S A GENERAL BUSINESS CREDIT.

Q. THAT'S A WHAT?

CROSS EXAMINATION

1 A. I BELIEVE 3800 IS A GENERAL BUSINESS CREDIT.

2 Q. A GENERAL BUSINESS?

3 A. CREDIT. IF MEMORY SERVES I BELIEVE 3800 IS A GENERAL
4 BUSINESS CREDIT.

5 Q. PERHAPS I MISSPOKE. ARE YOU AWARE OF A FINCEN FORM 3800?

6 A. THE FINCEN FORM 3800? NO, I'M NOT.

7 Q. I SEE. HAVE YOU EVER, AS A FIELD AGENT, EVER CONSIDERED
8 ISSUING A NOTICE ABOUT AN FBAR TO A TAXPAYER?

9 A. I'VE ASSERTED FBAR PENALTIES, YES.

10 Q. WELL, YOU'VE SEEN IN ALL OF THOSE NOTICES THAT CAME OUT
11 THAT YOU TALKED ABOUT THIS MORNING, THEY ALL CONTAIN REFERENCE
12 TO CITIBANK SINGAPORE; CORRECT?

13 A. NOT ALL OF THEM, BUT SOME OF THEM DID, I BELIEVE.

14 Q. WELL, I DON'T WANT TO GO THROUGH THEM ALL, BUT I WOULD SAY
15 THAT --

16 A. THERE WAS SOME.

17 Q. A MAJORITY OF THEM?

18 A. HONESTLY, I DON'T REMEMBER HOW MANY. BUT I'LL ACCEPT YOUR
19 REPRESENTATION THAT MOST OF THEM.

20 Q. OKAY. DO YOU SEE ANYTHING FURTHER FROM THE I.R.S., ANY
21 KIND OF NOTICE TO THE TAXPAYER THAT YOU MAY HAVE A FOREIGN BANK
22 ACCOUNT AND YOU MAY HAVE TO DO CERTAIN THINGS?

23 A. DID I SEE IT? NO.

24 Q. NO. DID YOU SEE ANY REFERENCE TO WHETHER CITIBANK
25 SINGAPORE HAD A REPRESENTATIVE OFFICE IN THE UNITED STATES?

CROSS EXAMINATION

1 A. I DON'T KNOW IF THEY DID, AND I DIDN'T SEE ANYTHING ABOUT
2 THAT.

3 Q. OKAY. LOOKING AT EXHIBIT 3 -- EXCUSE ME, 2. CAN YOU TURN
4 TO SCHEDULE B.

5 A. OKAY.

6 Q. DO YOU SEE ON SCHEDULE B A LIST OF INTEREST BANK ACCOUNTS,
7 OR BANK ACCOUNTS AND INTEREST?

8 A. YES.

9 Q. DO YOU SEE A REFERENCE TO A CITIBANK SINGAPORE?

10 A. YES, IT'S ON LINE 3, OR ON THE THIRD LINE I SHOULD SAY.

11 Q. RIGHT. YOU ALSO SEE A REFERENCE TO THE STATE BANK OF
12 INDIA?

13 A. YES.

14 Q. OKAY. AND YOU SEE THE SAME NOTE ABOUT "IF YOU RECEIVE THE
15 FORM 1099-INT OR FORM 1099-OID OR SUBSTITUTE STATEMENT FROM A
16 BROKERAGE FIRM, LIST THE FIRM'S NAME AS THE PAYOR AND ENTER THE
17 TOTAL INTEREST SHOWN ON THAT FORM"?

18 A. THAT'S WHAT IT SAYS.

19 Q. RIGHT. AND SO YOU SEE A LIST OF ALL OF THESE BANK
20 ACCOUNTS, CORRECT, OR FINANCIAL PAYORS?

21 A. YES.

22 Q. AND AT THE BOTTOM, THE QUESTION 7(A), "AT ANY TIME DURING
23 2008, DO YOU HAVE AN INTEREST IN OR A SIGNATURE OR OTHER
24 AUTHORITY OVER A FINANCIAL ACCOUNT IN A FOREIGN COUNTRY, SUCH
25 AS A BANK ACCOUNT, SECURITIES ACCOUNT, OR OTHER FINANCIAL

ACCOUNT.

"SEE PAGE B-2 FOR EXCEPTIONS AND FILING REQUIREMENTS FOR
FORM TD F 90-22.1."

A. YES.

Q. AND YOU SEE THE BOX IS CHECKED "NO."

A. CORRECT.

Q. AND AS A 27-YEAR I.R.S. REPRESENTATIVE, DO YOU HAVE AN
EXPLANATION FOR THAT?

MS. SISKIND: OBJECTION, YOUR HONOR. CAN WE GO TO
SIDE-BAR, PLEASE?

THE COURT: OBJECTION IS SUSTAINED.

(SIDE-BAR CONFERENCE ON THE RECORD.)

THE COURT: WE'RE AT SIDE-BAR NOW.

MS. SISKIND.

MS. SISKIND: HE'S ASKING THE SAME QUESTION OBJECTED
TO EARLIER. IT'S A COMPLETELY INAPPROPRIATE QUESTION.

MR. SCHAINBAUM: IT'S NOT A COMPLETELY INAPPROPRIATE
QUESTION. HE'S UP THERE GIVING EXPERT TYPE REFERENCES ON
VARIOUS THINGS. HE SAID THAT HE'S BEEN IN THE I.R.S. FOR
27 YEARS. IT'S A FAIR QUESTION TO SEE IF HE HAS AN
EXPLANATION.

THE COURT: HIS EXPLANATION IS NOT RELEVANT TO THIS.
IT CALLS FOR SPECULATION AND YOU'RE TRYING TO -- IT APPEARS
THAT YOU'RE TRYING TO GET HIM TO COMMENT ON POSSIBILITIES OF
ERRORS OR WHATEVER IT MIGHT BE, AND YOU CAN'T -- HIS OPINION

CROSS EXAMINATION

1 ABOUT THAT IS NOT RELEVANT.

2 MR. SCHAINBAUM: HIS STATEMENT AS TO WHAT HE
3 DETERMINES TO WHAT IT IS, IS KIND OF RELEVANT IN LIGHT OF THE
4 DIRECT EXAMINATION AND I JUST WANT TO MAKE A RECORD ON THAT
5 BECAUSE THEY WEREN'T -- YOU LET THEM GO VERY FAR IN THE DIRECT
6 EXAMINATION, AND TO NARROW IT AT THIS POINT JUST CONFINES US.

7 THE COURT: WELL, I'M NOT LIMITING YOUR EXAMINATION.
8 I'M LIMITING THE TYPE OF QUESTIONS YOU CAN ASK. YOU CAN ASK
9 HIM THE ULTIMATE OPINION.

10 MR. SCHAINBAUM: I'M NOT ASKING HIM AN ULTIMATE
11 OPINION.

12 THE COURT: WELL, THERE WAS A PREVIOUS QUESTION THAT
13 THERE WAS AN OBJECTION TO. YOU CAN'T ASK HIM THOSE QUESTIONS.

14 YOU CAN CERTAINLY ASK HIM ABOUT THE FORM, ABOUT WHAT THE
15 FORM MEANS, ABOUT HIS CALCULATIONS AS YOU HAVE BEEN DOING AND
16 I'VE PERMITTED YOU AND THAT'S ENTIRELY APPROPRIATE.

17 AND WHEN YOU GET INTO, I THINK, BASICALLY ONE OF THOSE
18 PREVIOUS QUESTIONS YOU WERE ASKING HIM WHETHER OR NOT HE FELT
19 THAT THE CLIENT HAD INTENT OR NOT, HE CAN'T TESTIFY ABOUT THAT.

20 MR. SCHAINBAUM: WELL, HE -- ALL I'M ASKING HIM IS
21 AS AN I.R.S. PERSON WHO HAS BEEN AROUND FOR 27 YEARS, DOES HE
22 HAVE AN EXPLANATION? HE DOESN'T HAVE TO SAY -- HE CAN SAY YES
23 OR NO.

24 THE COURT: AND IF HE SAYS YES, HE HAS AN
25 EXPLANATION, THAT'S JUST NOT APPROPRIATE AND I'M NOT GOING TO

CROSS EXAMINATION

1 LET YOU ASK HIM THAT EXPLANATION.

2 YOU CAN ASK HIM AND PERHAPS PRESENT HIM WITH THE FORM AND
3 ASK HIM QUESTIONS ABOUT HOW THE FORM IS PREPARED AND WHAT AN
4 OMISSION FROM A PARTICULAR BOX MIGHT MEAN. YOU KNOW, THOSE
5 TYPES OF THINGS ARE PERMITTED, SURE.

6 BUT YOU CAN'T -- YOU CAN'T GO AND TRY TO GET HIM TO
7 TESTIFY ABOUT YOUR CLIENT'S INTENT OR THE INTENT OF SOMEBODY
8 BECAUSE OF THEIR ACTIONS ON THE FORM. THAT'S NOT -- IN THE
9 ABSTRACT YOU CAN'T DO THAT.

10 MR. SCHAINBAUM: I'LL ASK DOES HE HAVE AN
11 EXPLANATION? HE MAY HAVE AN I.R.S. EXPLANATION. HE MAY HAVE
12 ANYTHING. HE MIGHT SAY COMMON SENSE.

13 THE COURT: YOU'RE ASKING HIM TO GIVE AN EXPLANATION
14 OF WHY YOUR CLIENT FILLED OUT A FORM.

15 MR. SCHAINBAUM: OR AN EXPLANATION OF WHY THIS
16 HAPPENED.

17 THE COURT: I DON'T THINK YOU CAN DO THAT.

18 MR. SCHAINBAUM: OKAY.

19 THE COURT: ALL RIGHT. THANK YOU.

20 MR. SCHAINBAUM: I OBJECT.

21 THE COURT: OF COURSE.

22 (END OF DISCUSSION AT SIDE-BAR.)

23 BY MR. SCHAINBAUM:

24 Q. OKAY. LOOKING AT EXHIBIT 3, AND TURNING TO SCHEDULE B, DO
25 YOU SEE ON EXHIBIT 3, SCHEDULE B, A REFERENCE TO THE CITIBANK

OF SINGAPORE?

A. YES, I DO.

Q. AND, NOW, BASED UPON THE EVIDENCE THAT THE GOVERNMENT PUT INTO THE RECORD AND WE WENT OVER, CITIBANK OF SINGAPORE IS A FOREIGN BANK; CORRECT?

A. I BELIEVE SO.

Q. AND UNDER THAT IS THE STATE BANK OF INDIA?

A. CORRECT.

Q. ALL RIGHT. AND BELOW -- THE QUESTION AT 7(A), "AT ANY TIME DURING 2009, DID YOU HAVE AN INTEREST IN OR A SIGNATURE OR OTHER AUTHORITY OVER A FINANCIAL ACCOUNT IN A FOREIGN COUNTRY, SUCH AS A BANK ACCOUNT, SECURITIES ACCOUNT, OR OTHER FINANCIAL ACCOUNT.

"SEE INSTRUCTIONS ON BACK FOR EXCEPTIONS AND FILING REQUIREMENTS FORM TD F 90-22.1?"

THAT'S THE FBAR; CORRECT?

A. YES.

Q. AND HOW IS THE BOX CHECKED?

A. IT'S CHECKED NO.

Q. AND THAT'S THE SAME FORM THAT CONTAINS THE BANK ACCOUNTS FOR THE CITIBANK OF SINGAPORE AND THE STATE BANK OF INDIA?

A. YES, THEY'RE ALL ON THE SAME PAGE.

Q. NOW, THESE BANKS APPEARING ON PART I, THEY ISSUE 1099'S; CORRECT?

A. I WOULD THINK SO. I DON'T KNOW FOR SURE. I HAVEN'T SEEN

THE 1099'S. I DON'T THINK THAT ALL OF THE 1099'S ISSUED TO
MR. AND MRS. DESAI WERE PUT INTO EVIDENCE.

Q. AND YOU KNOW, HOWEVER, FOR CERTAIN THAT HSBC DID NOT ISSUE
A 1099?

A. THEY DID NOT.

Q. OKAY. NOW, WITH RESPECT TO YOUR CALCULATIONS, YOUR
COMPUTATIONS, WHETHER THEY'RE CORRECT OR NOT, WHETHER THEY'RE
\$6 OR \$6 BILLION, IF MR. DESAI HAD A GOOD FAITH BELIEF THAT --

MS. SISKIND: OBJECTION, YOUR HONOR.

THE COURT: SUSTAINED.

BY MR. SCHAINBAUM:

Q. WHAT WOULD BE THE CIRCUMSTANCES OF MR. DESAI NOT HAVING TO
REPORT INTEREST INCOME BASED UPON HIS OWN GOOD FAITH BELIEF --

MS. SISKIND: OBJECTION, YOUR HONOR.

THE COURT: SUSTAINED.

BY MR. SCHAINBAUM:

Q. WOULD YOUR CALCULATIONS IN ANY WAY BE AFFECTED BY THE
INTENTIONS OF MR. DESAI?

MS. SISKIND: OBJECTION, YOUR HONOR.

THE COURT: SUSTAINED.

BY MR. SCHAINBAUM:

Q. WOULD YOUR CALCULATIONS IN ANY WAY BE IMPACTED BY ANY
FACTOR THAT PERTAINS TO THE STATE OF MIND OF MR. DESAI.

MS. SISKIND: OBJECTION, YOUR HONOR.

THE COURT: MR. SCHAINBAUM, SUSTAINED. WE TALKED

CROSS EXAMINATION
1 ABOUT THIS.

2 MR. SCHAINBAUM: OKAY.

3 Q. WITH RESPECT TO WHETHER OR NOT YOUR CALCULATIONS FOR THE
4 HIGH BANK BALANCE IS CORRECT OR NOT, WHETHER IT'S ZERO OR
5 \$6 MILLION, IS THERE ANY FACTOR THAT WOULD IMPACT WHETHER OR
6 NOT IT NEEDS TO BE CONSIDERED FOR THE FBAR?

7 LET ME REPHRASE IT FOR YOU.

8 A. IF YOU COULD, YES.

9 Q. AND IF THE FBAR IS NOT REQUIRED TO BE FILED, ARE THE HIGH
10 BALANCE BANK BALANCES RELEVANT?

11 MS. SISKIND: OBJECTION, YOUR HONOR.

12 THE COURT: SUSTAIN THE OBJECTION AS TO THE PHRASING
13 OF THE QUESTION.

14 MR. SCHAINBAUM: ALL RIGHT.

15 Q. IF THE FBAR IS NOT REQUIRED TO BE FILED IN THIS CASE FOR
16 2007, 2008, AND 2009, WHAT IS THE IMPACT ON YOUR HIGH BALANCE
17 BANK CALCULATIONS, WHETHER CORRECT OR NOT?

18 A. I CAN'T ANSWER THAT BECAUSE IT DOESN'T FOLLOW THE
19 EVIDENCE. THE EVIDENCE WOULD SHOW THAT AN FBAR IS REQUIRED.

20 Q. BUT IF AN FBAR WAS NOT REQUIRED, WHAT WOULD BE THE IMPACT
21 ON YOUR CALCULATIONS?

22 A. ON CALCULATIONS OF INTEREST AND HIGH BALANCE?

23 Q. NO. JUST THE HIGH BALANCE.

24 A. MY CALCULATIONS WOULDN'T CHANGE.

25 Q. WOULD THEY BECOME SOMETHING THAT WAS NECESSARY IF THERE IS

CROSS EXAMINATION
1 NO FBAR TO BE FILED?

2 MS. SISKIND: OBJECTION, YOUR HONOR. RELEVANCE.

3 MR. SCHAINBAUM: WELL, IT IS RELEVANT.

4 THE COURT: DID YOU UNDERSTAND THE QUESTION?

5 THE WITNESS: NOT REALLY, NO.

6 THE COURT: WHY DON'T REPHRASE THE QUESTION?

7 BY MR. SCHAINBAUM:

8 Q. IF NO FBAR IS REQUIRED TO BE FILED, WOULD YOUR
9 CALCULATIONS FOR THE HIGH BANK BALANCES, WHETHER CORRECT OR
10 NOT, BE NECESSARY?

11 MS. SISKIND: OBJECTION, YOUR HONOR.

12 THE COURT: OVERRULED.

13 YOU CAN ANSWER THAT, IF YOU CAN.

14 THE WITNESS: WELL, IT'S A HARD QUESTION TO ANSWER
15 BECAUSE IT DOESN'T FOLLOW THE EVIDENCE. THE EVIDENCE SHOWS
16 THAT AN FBAR WAS REQUIRED.

17 ASKING "IF," YOU CAN ASK "IF" ABOUT ANYTHING.

18 BUT THE EVIDENCE SHOWS THAT AN FBAR WAS REQUIRED, AND SO I
19 HONESTLY DON'T KNOW HOW TO ANSWER YOUR QUESTION, SIR.

20 BY MR. SCHAINBAUM:

21 Q. WELL, THAT'S A CONCLUSION THAT YOU'RE MAKING EVEN THOUGH
22 YOU HEARD THE EVIDENCE THAT THE REPRESENTATIVE OFFICES IN
23 NEW YORK AND FREMONT OF THE HSBC BANK WHERE TWO HSBC BANKERS
24 TESTIFIED THAT THEY WERE MANAGING AND OPERATING ACCOUNTS FROM
25 NEW YORK AND CALIFORNIA.

CROSS OERTEL

1 A. WELL, IF WE GO TO THE -- I BELIEVE THE WAY THAT THE
2 EXCEPTION THAT YOU'RE MAYBE REFERRING TO IS STATED, I
3 BELIEVE -- WHICH EXHIBIT IS IT THAT HAS THAT FBAR? OH, IT'S 9,
4 RIGHT?

5 Q. 9.

6 A. OKAY. THEY HAVE A REPRESENTATIVE OFFICE IN THE UNITED
7 STATES, OKAY.

8 NOW, WHAT THIS EXCEPTION SAYS, AND THE REASON IT WAS NOT
9 CONSIDERED, IS THAT IT SAYS, "DO NOT REPORT ANY ACCOUNT
10 MAINTAINED."

11 HIS ACCOUNTS WERE NOT MAINTAINED IN THE UNITED STATES,
12 SIR. THEY WERE MAINTAINED IN THE COUNTRY OF INDIA.

13 THE BANKERS WHO TESTIFIED TALKED ABOUT HOW THEY WOULD, YOU
14 KNOW, BE A LIAISON AND HELP THEIR CLIENTS WHO WERE IN THE U.S.
15 WITH, YOU KNOW, GETTING THINGS DONE IN INDIA.

16 AND SO THAT TELLS ME THAT IT'S INDIA THAT IS MAINTAINING
17 THE ACCOUNT, NOT THE UNITED STATES.

18 Q. COULD YOU READ THE WHOLE SENTENCE, MR. OERTEL?

19 A. "DO NOT REPORT ANY ACCOUNT MAINTAINED WITH A BRANCH,
20 AGENCY, OR OTHER OFFICE OF A FOREIGN BANK OR OTHER INSTITUTION
21 THAT IS LOCATED IN THE UNITED STATES, GUAM, PUERTO RICO, AND
22 THE VIRGIN ISLANDS."

23 HIS ACCOUNTS WERE NOT MAINTAINED HERE.

24 Q. NOW, IF THAT EXCEPTION OPERATES, DO YOU NEED TO FILE AN
25 FBAR?

A. IF SOMEONE --

Q. NO, THE QUESTION IS -- I'D LIKE THE ANSWER AND THEN YOU CAN EXPLAIN IT.

IF THAT EXCEPTION OPERATES, IS EFFECTIVE, NO FBAR IS REQUIRED; CORRECT? YES OR NO? AND THEN YOU CAN EXPLAIN IT?

A. OKAY. IF THIS --

Q. WAIT A MINUTE. I NEED TO GET AN ANSWER TO THAT PARTICULAR QUESTION.

THE COURT: CAN YOU ANSWER THAT?

THE WITNESS: YES, YES.

MR. SCHAINBAUM: YES, THAT --

THE COURT: EXCUSE ME. ONE AT A TIME, PLEASE.

THE WITNESS: OKAY.

THE COURT: CAN YOU ANSWER THAT YES OR NO?

THE WITNESS: THE ANSWER IS YES IF SOMEONE'S ACCOUNT IS NOT MAINTAINED OR -- IS NOT MAINTAINED IN A FOREIGN COUNTRY, THEN YOU WOULD NOT HAVE TO FILE AN FBAR.

BUT IN THIS INSTANCE IT WAS MAINTAINED IN INDIA. THEY HAVE AN OFFICE IN FREMONT, A LIAISON OR REPRESENTATIVE OFFICE.

BUT THE BANKERS WERE VERY CLEAR THAT THEY REALLY COULDN'T DO ANYTHING TO THAT ACCOUNT OR WITH THAT ACCOUNT.

AND IF YOU CAN'T DO ANYTHING WITH IT, IF YOU DON'T EACH HAVE ACCESS TO IT, HOW CAN YOU POSSIBLY MAINTAIN IT?

BY MR. SCHAINBAUM:

Q. WOULD YOU AGREE WITH ME THAT THE BANKERS FROM HSBC WHO

CROSS EXAMINATION
1 TESTIFIED WERE AGENTS OF THE REPRESENTATIVE BANK?

2 MS. SISKIND: YOUR HONOR, IT CALLS FOR A LEGAL
3 CONCLUSION ABOUT AGENCY.

4 MR. SCHAINBAUM: WELL, HE JUST GAVE A LEGAL
5 CONCLUSION.

6 THE COURT: YOU CAN ANSWER THE QUESTION, IF YOU CAN.

7 THE WITNESS: THEY SAID THAT THEY WORKED FOR THE
8 REPRESENTATIVE BANK.

9 BY MR. SCHAINBAUM:

10 Q. YEAH. WHAT I'M SAYING IS THAT THEY WERE AGENTS OF THE
11 REPRESENTATIVE BANK; CORRECT?

12 A. I DON'T KNOW WHAT YOU MEAN BY "AGENTS."

13 THEY SAID THAT THEY WERE LIAISONS BETWEEN THE PEOPLE IN
14 THE U.S. AND THE PEOPLE IN -- OR THE BANK IN INDIA. THAT'S
15 REALLY THE BEST ANSWER THAT I CAN GIVE YOU, SIR.

16 Q. YEAH. THEY SAID THAT THEY WERE EMPLOYED REPRESENTING HSBC
17 INDIA IN THE UNITED STATES; CORRECT?

18 A. THEY SAID -- YES.

19 Q. AND SO THEY WERE REPRESENTATIVES OF HSBC INDIA WORKING IN
20 THE UNITED STATES; CORRECT?

21 A. THEY WERE REPRESENTATIVES, YES.

22 Q. AND THEY WERE REPRESENTATIVES IN A REPRESENTATIVE OFFICE
23 OF HSBC INDIA IN THE UNITED STATES; CORRECT?

24 A. YES.

25 Q. SO THE RELATIONSHIP MANAGERS WERE AGENTS OF HSBC INDIA

REDIRECT EXAMINATION

1 WORKING IN THE UNITED STATES; CORRECT?

2 A. THEY WERE RELATIONSHIP MANAGERS, SIR. I HONESTLY DON'T
3 KNOW WHAT I MEAN BY "AGENTS." I'M AN AGENT.

4 Q. SO ARE YOU -- SO DO YOU REPRESENT THE INTERNAL REVENUE
5 SERVICE?

6 A. YES.

7 Q. ALL RIGHT. DID VANDANA KATJU AND AARTI KUMAR AND
8 COLLEAGUES OF THAT SORT REPRESENT HSBC INDIA?

9 A. YES.

10 Q. ALL RIGHT. I HAVE NO FURTHER QUESTIONS.

11 THE COURT: REDIRECT?

12 MS. SISKIND: YES, YOUR HONOR.

13 MR. SCHAINBAUM: I THINK WE NEED A COUPLE OF MINUTES
14 TO MOVE.

15 THE COURT: OF COURSE.

16 MR. SCHAINBAUM: I APPRECIATE YOUR COURTESY.

17 THE COURT: NOT AT ALL.

18 FOLKS, FEEL FREE TO STRETCH IF YOU'D LIKE DURING THESE
19 BREAKS.

20 THE WITNESS: DO YOU MIND IF I POUR MORE WATER?

21 THE COURT: OH, WE'LL GET YOU MORE WATER.

22 THE WITNESS: IT GETS WARM. THANK YOU. I'M FINE.
23 THANK YOU, MA'AM.

24 **REDIRECT EXAMINATION**

REDIRECT OERTEL

1 BY MS. SISKIND:

2 Q. GOOD AFTERNOON, MR. OERTEL.

3 A. HI.

4 Q. I WANT TO TAKE YOU -- START BY TAKING YOU BACK TO THOSE
5 TWO DEFENSE EXHIBITS THAT MR. SCHAINBAUM HAD YOU LOOK AT, GG-1
6 AND GG-2.

7 A. OKAY. SORRY, THEY'RE AT THE BOTTOM. OKAY.

8 Q. GENERALLY WHAT WAS THE SUBJECT OF THAT E-MAIL FROM YOU TO
9 AGENT HELGESEN IN JUNE OF LAST YEAR?

10 A. BASICALLY I HAD FOUND SOME DISCREPANCIES BETWEEN HOW SOME
11 THINGS WERE CALCULATED ON THE TAX RETURNS.

12 Q. AND DID YOU ACTUALLY, WHEN DOING -- PUTTING TOGETHER YOUR
13 REVENUE AGENT'S REPORT, GIVE THE DEFENDANT A CREDIT THAT HE HAD
14 FORGOTTEN TO CLAIM FOR HIMSELF?

15 A. SURE.

16 Q. AND AT THE END, YOU SAY THAT YOU MADE CHANGES BECAUSE THEY
17 BENEFIT THE TAXPAYER; RIGHT?

18 A. THAT'S RIGHT.

19 Q. AND IS THAT CONSISTENT WITH THE APPROACH THAT YOU TOOK TO
20 YOUR INTEREST INCOME CALCULATIONS IN THIS CASE?

21 A. THAT'S CORRECT, MA'AM.

22 Q. AND YOUR HIGH BALANCE CALCULATIONS?

23 A. YES, MA'AM.

24 Q. AND WHEREVER POSSIBLE, DID YOU GIVE A BENEFIT TO MR. DESAI
25 IN THOSE CALCULATIONS?

REDIRECT COUNTEL

1 A. YES, MA'AM.

2 Q. AND DOES THIS E-MAIL, INCIDENTALLY, HAVE ANYTHING TO DO
3 WITH YOUR CALCULATION OF INTEREST INCOME?

4 A. NO.

5 Q. AND DOES IT HAVE ANYTHING TO DO WITH YOUR CALCULATION OF
6 HIGH BALANCE?

7 A. NO.

8 Q. AND THAT GG-2 THAT MR. SCHAINBAUM SHOWED YOU, SOMETHING
9 ABOUT BACKING INTO AMOUNTS ON IDRS?

10 A. YES. I DON'T THINK WE SAID WHAT IDRS.

11 Q. WHAT IS IDRS?

12 A. IDRS IS THE I.R.S.'S COMPUTER DATABASE OF ALL OF THE
13 THINGS THAT HAPPEN ON ANY TAX RETURN.

14 SO IF YOU FILE SOMETHING, YOU PAY SOMETHING, ALL OF THOSE
15 ARE GOING TO GET INPUT. AND IF AN AGENT LIKE MYSELF WANTED TO
16 SEE WHAT HAPPENED ON YOUR ACCOUNT, I WOULD LOG INTO IDRS AND
17 THAT'S WHERE I WOULD FIND IT.

18 Q. AND, AGAIN, DOES GG-2 THAT MR. SCHAINBAUM WENT OVER WITH
19 YOU AT SOME LENGTH HAVE ANYTHING TO DO WITH YOUR CALCULATION OF
20 INTEREST INCOME?

21 A. NO.

22 Q. AND DOES IT HAVE ANYTHING TO DO WITH YOUR CALCULATION OF
23 HIGH BALANCE?

24 A. NO.

25 Q. NOW, THE NEXT SUBJECT I THINK HE WAS ASKING YOU ABOUT WAS

CERTAIN CD'S AND WHICH DOCUMENTS THEY APPEARED ON. DO YOU
RECALL THAT?

A. YES, MA'AM.

Q. AND I BELIEVE ONE OF THE ONES HE WAS ASKING YOU ABOUT WERE
SOME CD'S FOR ACCOUNT 9689. DO YOU RECALL THOSE QUESTIONS?

A. YES, MA'AM.

Q. AND HE ASKED YOU WHETHER OR NOT THEY APPEARED ANYWHERE ON
THE INTEREST CERTIFICATES IN EXHIBIT 137?

A. I DON'T REMEMBER IF IT WAS 137 OR 136.

Q. WELL, HE WAS ASKING YOU IF THEY APPEARED ON THE INTEREST
CERTIFICATES; RIGHT?

A. YES.

Q. AND CAN YOU PLEASE TURN TO EXHIBIT 23- -- EXCUSE ME --
23-7, 23-7?

A. SURE. OKAY.

Q. AND IS 23-7 YOUR INTEREST INCOME CALCULATION FOR ACCOUNT
9689?

A. MY CALCULATION?

Q. WELL, THE CALCULATION -- YOUR SUMMARY CHART FOR ACCOUNT
9689?

A. IT'S MY CHART, YES.

Q. AND THAT'S NEAL DESAI'S ACCOUNT; CORRECT?

A. YES.

Q. AND WHEN PREPARING THIS CHART, DID YOU ACCOUNT FOR THE
FACT THAT THE CD WASN'T ON THE INTEREST STATEMENT?

REDIRECT COUNTEL

1 A. UM --

2 Q. WHAT DOES IT SAY IN THE INTEREST PAID PER HSBC STATEMENT
3 COLUMN?

4 A. YEAH. IT SAYS THAT WE DIDN'T HAVE THAT.

5 Q. AND SO WHEN MR. SCHAINBAUM ASKED YOU TO LOOK FOR IT, IT
6 WAS KIND OF A TRICK QUESTION BECAUSE THERE WAS NONE?

7 MR. SCHAINBAUM: I OBJECT, YOUR HONOR. IT WAS A
8 STRAIGHTFORWARD QUESTION.

9 THE COURT: THANK YOU. SUSTAINED. SHE'LL ASK
10 ANOTHER QUESTION.

11 BY MS. SISKIND:

12 Q. BASED ON YOUR REVIEW OF THE INTEREST STATEMENTS, WAS THERE
13 ANY STATEMENT THAT HAS ACCOUNT 9689 ON IT?

14 A. FOR 2009? NO.

15 Q. AND SO WHAT DID YOU HAVE TO DO IN ORDER TO CALCULATE
16 INTEREST INCOME FOR THAT ACCOUNT FOR THAT YEAR?

17 A. I HAD TO USE THAT SAME PROCESS THAT I HAVE BEEN TALKING
18 ABOUT OVER AND OVER.

19 Q. AND THAT'S WHERE YOU HAD TO LOOK AT EITHER THE SCREEN
20 SHOTS OR THE SPREADSHEETS OR BOTH?

21 A. YES, MA'AM.

22 Q. MR. SCHAINBAUM WAS ALSO ASKING YOU ABOUT YOUR DECISION TO
23 COMPOUND INTEREST ON A DAILY BASIS.

24 A. YES.

25 Q. AND WAS -- AND A QUESTION OF WHETHER THAT WAS CONSISTENT

WITH HOW THE BANK DOES THINGS?

A. YES.

Q. TO THE BEST OF YOUR RECOLLECTION, WAS THERE ANY DOCUMENT OR ANY TESTIMONY INTRODUCED AT TRIAL ABOUT HOW THE BANK COMPOUNDS INTEREST?

A. NOT THAT I RECALL.

Q. AND IF THERE HAD BEEN, WOULD YOU HAVE USED THAT IN YOUR CALCULATIONS?

A. YEAH, IF I HAD SEEN THAT -- OR, YEAH.

Q. MR. SCHAINBAUM ALSO POINTED YOU TO THAT LINE IN THE FBAR INSTRUCTIONS THAT INSTRUCTS PEOPLE TO VALUE THEIR ACCOUNT USING THE EXCHANGE RATE ON THE LAST DAY OF THE YEAR; CORRECT?

A. THAT'S CORRECT.

Q. AND THAT'S NOT WHAT YOU DID FOR YOUR CALCULATIONS?

A. THAT'S RIGHT. I DID IT ON THE DATE WHEN SOMETHING MATURED, YEAH. I SHOULD HAVE DONE IT ON DECEMBER 31ST.

Q. AND I BELIEVE I ASKED YOU WHEN YOU TOOK THE STAND YESTERDAY IF ANYBODY POINTED OUT ANY ERRORS IN YOUR CALCULATIONS, WHETHER YOU WOULD BE WILLING TO MAKE CHANGES. IS THAT RIGHT?

A. SURE.

Q. AND SO LET'S TAKE A LOOK AT 24-1. AND I'M NOT GOING TO ASK YOU TO DO TOO MUCH MATH ON THE STAND, BUT MAYBE JUST A LITTLE.

A. OKAY.

Q. SO 24-1, THIS WAS YOUR HIGH BALANCE CALCULATION FOR MR. DESAI'S HSBC ACCOUNT FOR 2007; CORRECT?

A. THAT'S CORRECT.

Q. AND ARE THERE CD'S IN ALL DIFFERENT CURRENCIES?

A. THEY -- YEAH, FOUR DIFFERENT CURRENCIES.

Q. AND WHAT ARE THEY?

A. THEY WERE INDIAN RUPEES, UNITED STATES DOLLARS, GREAT BRITAIN POUNDS, AND EUROS.

Q. AND WOULD IT BE FAIR TO SAY THAT YOU ONLY HAVE TO DO AN EXCHANGE RATE WHEN IT'S SOMETHING OTHER THAN U.S. DOLLARS; RIGHT?

A. WELL, YEAH, THAT'S RIGHT.

Q. AND SO WHAT I WOULD LIKE YOU TO DO, IF YOU WOULD, IS JUST ADD UP THOSE CD'S. HOW MANY ARE IN U.S. DOLLARS BY THE WAY?

A. THERE ARE ONE, TWO, THREE, FOUR, FIVE -- SIX.

Q. AND SO WHAT I WOULD LIKE YOU TO DO, SO WE CAN PUT ASIDE THE EXCHANGE RATE FOR A MINUTE, JUST HAVE YOU ADD UP THOSE CD'S THAT ARE IN U.S. DOLLARS SO YOU DON'T HAVE TO DO A CONVERSION, AND IF YOU NEED A PAPER AND PEN, I CAN GIVE IT TO YOU.

THE COURT: DO YOU HAVE A CALCULATOR WITH YOU?

THE WITNESS: I CAN KIND OF DO IT IN MY HEAD. IS IT OKAY IF I DO APPROXIMATION?

MS. SISKIND: SURE.

THE WITNESS: ABOUT FOUR AND A HALF.

REDIRECT EXAMINATION

1 BY MS. SISKIND:

2 Q. FOUR AND A HALF WHAT?

3 A. FOUR AND A HALF MILLION.

4 Q. FOUR AND A HALF MILLION DOLLARS?

5 A. YEAH.

6 Q. SO EVEN IF WE IGNORE THE CD'S THAT YOU HAD TO DO SOME KIND
7 OF CURRENCY CONVERSION FOR, YOUR HIGH BALANCE CALCULATION WOULD
8 STILL BE ABOUT FOUR AND A HALF MILLION DOLLARS FOR 2007?

9 A. YES, AND THAT'S AN APPROXIMATE.

10 Q. SURE. IF WE CAN LOOK AT 24-2.

11 A. OKAY.

12 Q. IS THIS YOUR CALCULATION OF HIGH BALANCE FOR 2008?

13 A. YES.

14 Q. AND BEFORE WE DO THAT, LET ME JUST ASK YOU, FOUR AND A
15 HALF MILLION DOLLARS, IS THAT IN EXCESS OF THE THRESHOLD FOR
16 WHICH THE PERSON NEEDS TO FILE AN FBAR?

17 A. YES.

18 Q. AND WHAT IS THAT THRESHOLD AGAIN?

19 A. IT'S \$10,000.

20 Q. SO IF YOU GO TO 24-2, IS THIS YOUR CALCULATION OF HIGH
21 BALANCE FOR MR. DESAI'S HSBC INDIA ACCOUNT FOR 2008?

22 A. YES, MA'AM.

23 Q. AND ONCE AGAIN, ARE THERE CD'S IN SEVERAL DIFFERENT
24 CURRENCIES?

25 A. THE SAME CURRENCIES, YEAH, THE SAME FOUR.

Q. AND HOW MANY ARE IN U.S. DOLLARS?

A. SIX.

Q. AND SO IF WE SET ASIDE THE EXCHANGE RATE ISSUE FOR JUST A MINUTE AND FOCUS ON THE U.S. DOLLARS, WHAT WOULD BE THE APPROXIMATE HIGH BALANCE IN THE DEFENDANT'S ACCOUNT FOR THAT YEAR?

A. ABOUT 2.7 MILLION.

Q. U.S. DOLLARS?

A. YES.

Q. IN EXCESS OF THE THRESHOLD FOR FILING AN FBAR?

A. YES.

Q. AND IF YOU GO TO 24-3, IS THIS YOUR CALCULATION OF HIGH BALANCES FOR MR. DESAI'S ACCOUNT 3679 FOR 2009?

A. YES.

Q. AND HOW MANY DIFFERENT CURRENCIES ARE THESE CD'S HELD IN?

A. THREE.

Q. AND HOW MANY ARE IN U.S. DOLLARS?

A. TWO.

Q. AND IF YOU IGNORE THE CURRENCY EXCHANGE RATE ISSUE AND FOCUS ON THE U.S. DOLLAR DEPOSITS, WHAT WOULD THE HIGH BALANCE IN THE DEFENDANT'S ACCOUNT BE FOR 2009?

A. AROUND 737,000.

Q. U.S. DOLLARS?

A. YES, MA'AM.

Q. NOW, MR. SCHAINBAUM SHOWED YOU THE FORM SCHEDULE B THAT

WERE ATTACHED TO THE DEFENDANT'S 2007, '08, AND '09 TAX RETURNS, DO YOU RECALL THAT?

A. YES.

Q. AND WELL, LET'S TAKE A LOOK AT ONE OF THEM. GO TO EXHIBIT 1, AND THE FOURTH PAGE OF THAT EXHIBIT WILL BE THE SCHEDULE B.

A. YOU SAID EXHIBIT 1, RIGHT?

Q. YES, PLEASE.

A. OKEY DOKE.

Q. AND MR. SCHAINBAUM HAD YOU READ THAT NOTE THAT TALKS ABOUT IF YOU GET A 1099, HERE'S WHERE YOU REPORT IT, RIGHT?

A. YES.

Q. AND IF A PERSON EARNS, UNDER YOUR UNDERSTANDING OF THE 1040 INSTRUCTIONS THAT ARE IN EVIDENCE --

A. UH-HUH.

Q. -- IF A PERSON EARNS INTEREST INCOME, BUT DOESN'T GET A 1099, DOES THAT MEAN THAT THEY DON'T HAVE TO REPORT THE INCOME ON THEIR TAX RETURN?

A. ACTUALLY THERE'S A LITTLE BLURB THAT I REMEMBER READING THAT ADDRESSES, YOU KNOW, WHAT IF YOU DON'T GET A 1099? AND IT SAYS EVEN IF YOU DON'T GET A 1099, YOU STILL HAVE TO REPORT IT.

Q. THE LAST THING I WANT YOU TO LOOK AT, PLEASE, IS EXHIBIT 9, THE FBAR -- ONE OF THE BLANK FBARS.

A. SORRY. YOUR BOOK IS FALLING APART.

Q. SORRY ABOUT THAT.

A. THAT'S ALL RIGHT. OKAY.

Q. AND MR. SCHAINBAUM WAS ASKING YOU ABOUT THE EXCEPTIONS FOR FBAR FILING ON PAGE 3, I BELIEVE.

A. YEAH, PAGE 3.

Q. AND CAN YOU READ THE WHOLE LAST PARAGRAPH OF THE EXCEPTIONS?

A. SURE. "REPORT ANY FINANCIAL ACCOUNT (EXCEPT A MILITARY BANKING FACILITY AS DEFINED IN THESE INSTRUCTIONS) THAT IS LOCATED IN A FOREIGN COUNTRY, EVEN IF IT" HAS -- "EVEN IF IT IS HELD AT AN AFFILIATE OF A UNITED STATES BANK OR OTHER FINANCIAL INSTITUTION. DO NOT REPORT ANY ACCOUNT MAINTAINED WITH A BRANCH, AGENCY, OR OTHER OFFICE OF A FOREIGN BANK OR OTHER INSTITUTION THAT IS LOCATED IN THE UNITED STATES, GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS."

Q. NOW, IS IT FAIR TO SAY THAT BASED ON THAT INSTRUCTION, IT IS THE LOCATION OF THE ACCOUNT THAT CONTROLS FBAR REPORTING?

MR. SCHAINBAUM: YOUR HONOR, I OBJECT. THAT REQUIRES A LEGAL CONCLUSION.

THE COURT: SUSTAINED TO THE QUESTION AS ASKED.
BY MS. SISKIND:

Q. BASED ON THE EVIDENCE INTRODUCED AT TRIAL, DOES THIS EXCEPTION APPLY TO MR. DESAI?

MR. SCHAINBAUM: YOUR HONOR, THAT'S BASED ON THE ULTIMATE FINDINGS AND THAT'S FOR THE JURY.

THE COURT: I'LL SUSTAIN THE OBJECTION.

BY MS. SISKIND:

Q. WHERE DID MS. KATJU SAY THAT MR. DESAI'S BANK ACCOUNT WAS
LOCATED?

A. IN INDIA.

Q. AND WHERE DID MS. KUMAR SAY THAT MR. DESAI'S BANK ACCOUNT
WAS LOCATED?

A. INDIA.

MS. SISKIND: I HAVE NO FURTHER QUESTIONS, YOUR
HONOR.

THE COURT: RECROSS.

RECROSS-EXAMINATION

BY MR. SCHAINBAUM:

Q. MR. OERTEL --

A. YES.

Q. -- IN YOUR 27 YEARS OF BEING A REVENUE AGENT, HAVE YOU
EVER COME ACROSS THE INTERNAL REVENUE CODE THAT HAS PROVISIONS
FOR EXCEPTIONS FOR REPORTING TAXABLE INCOME?

LET ME PUT IT ANOTHER WAY. ARE THERE INCOMES THAT ARE
EXEMPT?

A. YES, THERE IS SOME INCOME -- SOME TYPES OF INCOME THAT ARE
EXEMPT.

Q. HAVE YOU EVER HAD ANY EXPERIENCE WITH U.S. TREATIES WITH
OTHER COUNTRIES?

MS. SISKIND: OBJECTION, YOUR HONOR. BEYOND THE
SCOPE OF REDIRECT.

1 THE COURT: SUSTAINED.

2 MR. SCHAINBAUM: NO. HE ASKED -- SHE ASKED HIM
3 ABOUT --

4 MS. SISKIND: THERE WERE NO QUESTIONS ABOUT
5 TREATIES.

6 MR. SCHAINBAUM: REPORT ALL INCOME, AND THIS IS THE
7 OTHER SIDE OF REPORTING ALL INCOME.

8 SURE, SHE DIDN'T ASK HIM ABOUT TREATIES, BUT THE FLIP SIDE
9 OF REPORTING TAXABLE INCOME IS EXEMPT INCOME.

10 THE COURT: I'M GOING TO SUSTAIN THE OBJECTION AS
11 YOU PHRASED THE QUESTION, MR. SCHAINBAUM.

12 MR. SCHAINBAUM: ALL RIGHT.

13 Q. LET ME REPHRASE BY ASKING ARE YOU FAMILIAR WITH ANY FORMS
14 OF EXEMPT INCOME?

15 A. YES, THERE ARE SOME FORMS OF EXEMPT INCOME.

16 Q. AND IS ONE SUCH FORM OF EXEMPT INCOME THE RESULT OF A
17 TREATY BETWEEN THE UNITED STATES AND ANOTHER FOREIGN COUNTRY?

18 A. I DO NOT KNOW.

19 Q. HAVE YOU ANY EXPERIENCE WITH TREATIES?

20 A. I KNOW WE HAVE TREATIES. I HAVE WORKED CASES WHERE THERE
21 ARE EXCHANGE OF INFORMATION REQUESTS THROUGH TREATIES. THAT'S
22 ABOUT ALL I KNOW.

23 Q. HAVE YOU, IN REVIEWING THIS CASE FOR YOUR PRESENTATION,
24 YOUR TESTIMONY HERE, LOOKED AT ANY TREATY BETWEEN THE UNITED
25 STATES AND INDIA?

MS. SISKIND: OBJECTION, YOUR HONOR. BEYOND THE
SCOPE.

THE COURT: I'LL ALLOW IT. CAN YOU ANSWER? DID YOU
LOOK AT A TREATY?

THE WITNESS: NO.

MR. SCHAINBAUM: NO. OKAY.

Q. DO YOU KNOW, IN CONSIDERING YOUR CALCULATIONS, WHETHER YOU
GAVE ANY CONSIDERATION TO EXEMPT INCOME?

A. THERE -- AS FAR AS I KNOW THERE WAS NO EXEMPT INCOME. THE
INTEREST THAT I CALCULATED AND THAT IS SHOWN IN THE EVIDENCE
WAS TAXABLE.

Q. DID YOU GIVE ANY CONSIDERATION TO FOREIGN TAX CREDITS?

MS. SISKIND: OBJECTION, YOUR HONOR. THAT GOES TO A
TAX COMPUTATION.

MR. SCHAINBAUM: WELL, THAT'S WHAT YOU ASKED HIM
ABOUT.

MS. SISKIND: YOUR HONOR, HE WAS ASKED ABOUT
INTEREST INCOME AND HIGH BALANCE.

THE COURT: I UNDERSTAND. I UNDERSTAND.
YOU CAN ANSWER THE QUESTION. DID YOU DO ANY CALCULATION?

THE WITNESS: FOR A FOREIGN TAX CREDIT?
BY MR. SCHAINBAUM:

Q. CORRECT.

A. NO, I DID NOT.

Q. DID YOU KNOW THAT THERE WAS A FOREIGN TAX CREDIT?

1 A. I KNOW THAT THERE WAS SUCH A THING AS A FOREIGN TAX
2 CREDIT.

3 Q. NO. MY QUESTION IS, DID YOU KNOW THAT THERE WAS A FOREIGN
4 TAX CREDIT IN THIS CASE?

5 MS. SISKIND: OBJECTION, YOUR HONOR.

6 THE COURT: SUSTAINED.

7 BY MR. SCHAINBAUM:

8 Q. SO WHAT FACTORS DID YOU CONSIDER IN YOUR COMPUTATION?

9 A. I THINK I HAVE GONE OVER THAT A LOT OF TIMES. I
10 CALCULATE -- I MEAN, THE INTEREST CALCULATIONS OR --

11 Q. WELL, IN DETERMINING THE TAXABLE INCOME, DID YOU COME UP
12 WITH ANY CREDITS OF ANY KIND?

13 A. NO, THAT'S -- THAT WASN'T AT ISSUE HERE.

14 Q. EXCUSE ME? THAT WASN'T AT ISSUE?

15 A. NO. I MEAN, THE -- IT WASN'T BROUGHT UP.

16 Q. BY WHOM?

17 A. I DON'T THINK EITHER OF YOU BROUGHT IT UP.

18 Q. WELL, I DIDN'T PRESENT THE CASE. WHEN YOU SAY BROUGHT UP,
19 WAS IT NOT BROUGHT UP BY THE GOVERNMENT? DON'T LOOK OVER
20 THERE.

21 MS. SISKIND: OBJECTION, YOUR HONOR. WE'RE GETTING
22 INTO A SUBJECT --

23 THE COURT: SUSTAINED, MR. SCHAINBAUM.

24 MR. SCHAINBAUM: ALL RIGHT.

25 THE COURT: YOU CAN MOVE ON.

MR. SCHAINBAUM: IT'S JUST THAT THE WITNESS KEEPS
LOOKING OVER FOR SOME KIND OF CLUE.

THE COURT: YOU CAN ASK YOUR QUESTION.

BY MR. SCHAINBAUM:

Q. ALL RIGHT. DO YOU HAVE EXHIBIT 23-1 BEFORE YOU?

A. YES.

Q. FOR 2008 DO YOU SEE ACCOUNT NUMBERS 256 AND 258?

A. YES.

Q. AND WHAT IS THE CURRENCY THAT IS CLAIMED ON THOSE
ACCOUNTS?

A. THAT'S GREAT BRITAIN POUNDS AND EUROS.

Q. ALSO. CAN YOU JUST KEEP THAT PLACE AND GO TO EXHIBIT 137.

MS. SISKIND: YOUR HONOR, THIS IS BEYOND THE SCOPE
OF REDIRECT. WE DIDN'T GO OVER THESE PARTICULAR CD'S ON
REDIRECT.

MR. SCHAINBAUM: WE DID GO OVER THE CALCULATION OF
THE NUMBERS, AND MAYBE NOT THESE EXACT CD'S, BUT THEY WERE
WITHIN THOSE NUMBERS.

MS. SISKIND: YOUR HONOR, WE WENT OVER THE HIGH
BALANCE NUMBERS, BUT NOT THE INTEREST INCOME CALCULATION.

THE COURT: MR. SCHAINBAUM, HOW FAR ARE YOU GOING
WITH THIS?

MR. SCHAINBAUM: NOT FAR.

THE COURT: THAT'S RIGHT.

YOU CAN ANSWER THE QUESTION.

MR. SCHAINBAUM: THANK YOU.

THE WITNESS: WHAT IS THE QUESTION?

BY MR. SCHAINBAUM:

Q. THE QUESTION IS, DO YOU HAVE EXHIBIT 137 BEFORE YOU?

A. YES.

Q. DO YOU SEE ACCOUNTS NUMBERED 256 AND 258?

A. IN WHICH YEAR?

Q. 2008.

A. 2008 YES.

Q. AND WHAT IS THE CURRENCY DENOMINATION FOR THOSE TWO
ACCOUNTS?

A. IT SHOWS U.S.D., BUT I REMEMBER IN MY DIRECT EXAMINATION
THAT I THINK WE HAD ADDRESSED THAT, THAT I HAD NOTICED THAT
THERE WAS A DISCREPANCY THERE ALSO.

SO I ACCOUNTED FOR IT.

Q. HOW DID YOU ACCOUNT FOR IT?

A. BY USING THE CORRECT --

Q. THE CORRECT?

A. BY USING THE CORRECT CURRENCY.

Q. AND WHICH CURRENCY WAS CORRECT?

A. I BELIEVE IF I USED BRITISH POUNDS IN EUROS I WOULD HAVE
TO SAY THAT THAT'S THE CORRECT ONE.

Q. AND WOULD THAT BE BASED ON COMMON SENSE?

MS. SISKIND: OBJECTION, YOUR HONOR.

THE COURT: SUSTAINED.

1 MR. SCHAINBAUM: I HAVE NO FURTHER QUESTIONS.

2 THE COURT: ANYTHING FURTHER?

3 MS. SISKIND: NOTHING FURTHER.

4 THE COURT: MAY THE WITNESS BE EXCUSED,

5 MR. SCHAINBAUM?

6 MR. SCHAINBAUM: YES.

7 THE COURT: THANK YOU, SIR. YOU MAY STAND DOWN.

8 THE WITNESS: THANK YOU. YOUR HONOR, I DO HAVE A
9 QUESTION. I'M A SUMMARY WITNESS AND MY TESTIMONY IS DONE.

10 WILL I BE ALLOWED TO STAY IN THE --

11 THE COURT: YOU'VE BEEN EXCUSED.

12 MR. SCHAINBAUM: YES.

13 THE COURT: BOTH PARTIES HAVE EXCUSED YOU.

14 THE WITNESS: THANK YOU. I WANTED TO BE SURE.

15 MS. SISKIND: YOUR HONOR, I THINK WE HAVE A
16 HOUSEKEEPING MATTER TO ATTEND TO WITH MS. GARCIA TO MAKE SURE
17 ALL OF THE EXHIBITS THAT WE BELIEVE ARE IN EVIDENCE ACTUALLY
18 ACCORDING TO THE COURT'S RECORDS ARE IN EVIDENCE.

19 THE COURT: ALL RIGHT.

20 MR. SCHAINBAUM: AND I HAVE A HOUSEKEEPING MATTER.
21 COULD I HAVE A SIDE-BAR?

22 THE COURT: YES. DO WE NEED TO HAVE THE SIDE-BAR

23 BEFORE -- I WANTED TO ASK MS. SISKIND WHETHER OR NOT THE

24 GOVERNMENT RESTS CONTINGENT ON ALL OF THE EXHIBITS OFFERED AND
25 RECEIVED OR ACTUALLY RECEIVED INTO EVIDENCE.

1 MS. SISKIND: SUBJECT TO THAT VERIFICATION, YOUR
2 HONOR, THE UNITED STATES RESTS.

3 THE COURT: ALL RIGHT. THANK YOU. LET'S HAVE A
4 SIDE-BAR. THANK YOU.

5 (SIDE-BAR CONFERENCE ON THE RECORD.)

6 THE COURT: WE'RE AT SIDE-BAR.

7 MR. SCHAINBAUM: I HAVE A HOUSEKEEPING PROBLEM.

8 I DON'T LIKE TO DO THIS, BUT THE PROBLEM IS I HAVE AN
9 ATTORNEY HERE WITH HIS WITNESS AND THE WITNESS WILL NOT BE
10 AVAILABLE NEXT WEEK. IT'S A SHORT WITNESS. IT CAN'T BE MORE
11 THAN A HALF HOUR.

12 THE COURT: AND YOU WANT TO PUT HIM ON?

13 MR. SCHAINBAUM: YEAH. BUT I REALLY -- BUT I WANT
14 TO PROTECT MY RIGHTS UNDER RULE 29.

15 THE COURT: SURE. OKAY.

16 MR. SCHAINBAUM: AND A HOUSEKEEPING MATTER, SINCE HE
17 CANNOT COME BACK, HE WOULD COME BACK, BUT IT'S NOT A PRACTICAL
18 POSSIBILITY AT THIS TIME.

19 THE COURT: SO YOU CAN MAKE YOUR RULE 29 MOTION AT
20 THE CONCLUSION OF THE GOVERNMENT'S CASE OR AT THE CONCLUSION OF
21 THE ENTIRE CASE.

22 MR. SCHAINBAUM: OH, I'M GOING TO DO THAT THEN AS
23 WELL AS NOW.

24 THE COURT: BOTH.

25 MR. SCHAINBAUM: I'M DOING IT NOW, BUT I'M GOING TO

1 FILL IN THE BLANKS UNDER RULE 29.

2 THE COURT: BUT YOU'D LIKE TO -- PRIOR TO MAKING
3 YOUR RULE 29, YOU'D LIKE TO PUT THIS WITNESS UP? IS THAT WHAT
4 YOU'RE SAYING?

5 MR. SCHAINBAUM: NO. I WANT TO PUT THE RULE 29 AND
6 THEN FILL IN THE BLANKS, BUT THIS WITNESS -- TAKE HIM OUT OF
7 TURN IN SHORT.

8 THE COURT: EXCUSE ME. SO YOU WANT TO TAKE A BREAK
9 AND MAKE YOUR RULE 29 MOTION AND THEN PUT THE WITNESS ON?

10 MR. SCHAINBAUM: RIGHT. CORRECT.

11 THE COURT: WELL, I DON'T KNOW HOW MUCH TIME YOU
12 HAVE.

13 MR. SCHAINBAUM: YOU CAN TAKE IT UNDER ADVISEMENT.

14 THE COURT: OF COURSE, OF COURSE. WELL, WE'LL SEE
15 HOW MUCH TIME WE HAVE FOR THIS WITNESS. IF YOU DON'T FINISH
16 HIM, I'LL HAVE TO ORDER HIM BACK MONDAY.

17 MR. SCHAINBAUM: WELL, YOU'RE THE JUDGE AND I'M JUST
18 A MERE ATTORNEY.

19 MS. SISKIND: WELL, I DON'T KNOW. I MEAN, GIVEN THE
20 PREVIOUS ARGUMENTS WE'VE HAD IN THIS COURTROOM, I IMAGINE IT'S
21 GOING TO BE QUITE A LENGTHY RULE 29 ARGUMENT.

22 MR. SCHAINBAUM: WE CAN DEFER THE ARGUMENT FOR THE
23 WITNESS. I CAN MAKE THE RULE 29 AND THEN ARGUE LATER.

24 MS. SISKIND: I THINK RULE 29 SHOULD BE RULED UPON
25 AT THE CONCLUSION OF THE GOVERNMENT'S CASE.

1 THE COURT: WELL, THE COURT --

2 MS. SISKIND: WE SHOULD JUST ARGUE IT.

3 MR. SCHAINBAUM: I AGREE. UNDER THE CIRCUMSTANCES,
4 IT'S A PRACTICAL PROBLEM. HE'S A WITNESS WHO FLEW UP TODAY AND
5 WE TOLD HIM IT WOULD BE LATE IN THE AFTERNOON AND HIS LAWYER
6 ADVISED ME, AND I KNEW THIS AHEAD OF TIME, THAT HE WASN'T GOING
7 TO BE AVAILABLE NEXT WEEK.

8 SO THAT'S THE PRACTICAL PROBLEM. I'M NOT GIVING UP ANY
9 RIGHTS.

10 THE COURT: SO LET'S DO THE RULE 29 MOTION AND THEN
11 I MAY HAVE TO ORDER HIM BACK MONDAY.

12 MS. SISKIND: WE CAN ALSO, I MEAN, TAKE THIS WITNESS
13 OUT OF TURN NEXT WEEK.

14 THE COURT: HE'S NOT AVAILABLE? IS HE AVAILABLE AT
15 ALL NEXT WEEK?

16 MS. SISKIND: HE TOLD ME HE'S AVAILABLE PART OF NEXT
17 WEEK.

18 MR. SCHAINBAUM: HE DID?

19 MS. SISKIND: YES.

20 MR. SCHAINBAUM: THEY KNOW MORE THAN I DO.

21 THE COURT: WELL, WHY DON'T YOU CHECK WITH HIM AND
22 SEE WHAT HIS AVAILABILITY IS?

23 MR. SCHAINBAUM: I MEAN, I WOULD -- IF I HAD, YOU
24 KNOW, MY DRUTHERS HERE IS TO HAVE THE ENTIRE RULE 29 ARGUED AND
25 THEN CALL THE WITNESS, AND THE ONLY REASON I'M UP HERE IS

1 AGAINST MY OWN WAY OF DOING THINGS IS TO ACCOMMODATE THE
2 WITNESS.

3 THE COURT: I UNDERSTAND.

4 MR. SCHAINBAUM: I MEAN, BECAUSE TECHNICALLY I'LL
5 JUST MAKE THE RULE 29, PROTECT THE RECORD, AND I CAN DEFER THE
6 ARGUMENT AND YOU CAN TAKE IT UNDER ADVISEMENT, OR WE CAN DO THE
7 WHOLE NINE YARDS ON RULE 29.

8 THE COURT: WELL, WE CAN EMBARK ON THE RULE 29
9 MOTION. I DON'T KNOW HOW LONG THAT'S GOING TO TAKE. IT'S NOW
10 20 MINUTES AFTER 4:00. I DON'T KNOW HOW LONG YOU'RE GOING TO
11 TAKE ON THAT. I'LL GIVE YOU AS MUCH TIME AS YOU WANT ON THAT,
12 OF COURSE.

13 MR. SCHAINBAUM: THANK YOU VERY MUCH.

14 THE COURT: BUT THEN WE RUN INTO WITNESS TIMES.

15 MR. SCHAINBAUM: WELL, LET ME GO TALK BECAUSE
16 MS. SISKIND HAS MORE POWER.

17 MS. SISKIND: I HAVE NO MORE POWER. I THOUGHT HE
18 SAID HE WAS UNAVAILABLE MONDAY, TUESDAY, AND WEDNESDAY. I MAY
19 BE MISTAKEN.

20 THE COURT: DO YOU WANT TO TALK TO HIM AND TELL HIM
21 WHAT'S COMING?

22 MR. SCHAINBAUM: I DO.

23 THE COURT: WHY DON'T YOU GO OVER AND ASK HIM AND
24 I'LL WAIT FOR YOUR ANSWER HERE.

25 (PAUSE IN PROCEEDINGS.)

1 MR. SCHAINBAUM: ONE OF THE CLASSIC JOYS OF
2 LITIGATING. HE CAN'T GET BACK HERE UNTIL MAYBE THURSDAY
3 AFTERNOON.

4 THE BEST SOLUTION, WHICH IS NOT A GREAT SOLUTION, IS TO DO
5 IT NOW, TO MAKE THE RULE 29 MOTION, DEFER ARGUMENT, AND THEN
6 TAKE IT UNDER SUBMISSION AND LET US PUT HIM ON AS A SHORT
7 WITNESS.

8 THE COURT: DEFINE "SHORT." WHAT DOES THAT MEAN?

9 MR. SCHAINBAUM: IT CAN'T BE MORE THAN A HALF HOUR.

10 THE COURT: THAT'S FOR DIRECT?

11 MR. SCHAINBAUM: NO.

12 THE COURT: THAT'S COMPLETE AND EVERYTHING?

13 MR. SCHAINBAUM: YEAH. I MEAN, MAYBE 15 MINUTES.

14 THE COURT: WELL, I WILL WANT TO PROTECT YOUR RULE
15 29 MOTION AND I'M HAPPY TO DO THAT. WE CAN HAVE THE JURY STEP
16 OUT AND YOU CAN MAKE SOME OPENING STATEMENTS AND YOU CAN HAVE
17 SOME COMMENTS ON IT AND WE'LL PROTECT IT FOR THE RECORD AND SEE
18 WHAT WE CAN DO WITH THE WITNESS.

19 WHAT IS THE OFFER OF PROOF OF THIS WITNESS?

20 MR. SCHAINBAUM: THE OFFER OF PROOF IS THAT HE WAS
21 PRESENT AT A MEETING IN NEWPORT BEACH AND TWO HSBC BANKERS
22 SAID, PUT YOUR DEPOSITS IN HSBC INDIA, THERE'S NO TAX
23 CONSEQUENCES IN THE U.S., THERE'S A HIGH INTEREST RATE AND
24 THERE'S NO 1099'S ISSUED.

25 AND, IN FACT, THAT'S WHAT HAPPENED. IF YOU RECALL,

1 VANDANA KATJU AND AARTI KUMAR, WHEN I ASKED QUESTIONS ALL OVER
2 THE PLACE, THEY KEPT DENYING.

3 THE COURT: THEY DENY THEY SAID THAT.

4 MR. SCHAINBAUM: THEY DENIED, RIGHT. SO THERE WAS A
5 MAN AND A WOMAN.

6 MS. SISKIND: BASED ON THE OFFER OF PROOF, AT THIS
7 TIME WE DON'T HAVE AN OBJECTION TO THE WITNESS BEING CALLED.

8 MR. SCHAINBAUM: OKAY. THANK YOU.

9 THE COURT: OKAY. WELL, LET'S DO THIS REAL QUICK
10 AND WE'LL GET OUR JURY OUT OF HERE AT 5:00 O'CLOCK. I ALWAYS
11 PROMISE THEN BEFORE 5:00.

12 MR. SCHAINBAUM: I'LL DO IT.

13 THE COURT: THANK YOU. I'LL ASK THEM TO STEP OUT.

14 (END OF DISCUSSION AT SIDE-BAR.)

15 THE COURT: LADIES AND GENTLEMEN, THE GOVERNMENT HAS
16 NOW RESTED, WHICH MEANS THAT THEY HAVE FINISHED THEIR CASE.

17 WHAT I'M GOING TO DO IS TO -- I NEED TO TAKE ABOUT
18 TEN MINUTES WITH THESE LAWYERS OUTSIDE OF YOUR PRESENCE, BUT
19 I'M NOT GOING TO RELEASE YOU YET TODAY.

20 I EXPECT -- MY THOUGHT IS, AFTER TALKING WITH THE LAWYERS,
21 IS THAT WE MAY BE ABLE TO PRESENT SOME DEFENSE EVIDENCE, AT
22 LEAST GET ONE WITNESS FINISHED TODAY, AND I THINK WE CAN
23 COMPLETE THAT BEFORE 5:00 O'CLOCK.

24 SO LET ME ASK YOU TO -- IF YOU WOULD, I'LL EXCUSE YOU FOR
25 JUST A MOMENT. IF YOU COULD PLEASE GO TO THE JURY ROOM AND

1 WE'LL CALL YOU BACK. JUST A MOMENT. THANK YOU.

2 (JURY OUT AT 4:25 P.M.).

3 THE COURT: ALL RIGHT. THE RECORD SHOULD REFLECT
4 THAT THE JURY HAS LEFT THE COURTROOM. THE GOVERNMENT HAS
5 RESTED.

6 MR. SCHAINBAUM.

7 MR. SCHAINBAUM: YOUR HONOR, ON BEHALF OF THE
8 DEFENDANT WE MAKE A MOTION UNDER FEDERAL RULES OF CRIMINAL
9 PROCEDURE RULE 29.

10 THE COURT: ALL RIGHT. AND YOU'RE ASKING FOR?

11 MR. SCHAINBAUM: I WOULD ASK THAT WE DEFER THE
12 ARGUMENT BECAUSE OF THE HOUSEKEEPING PROBLEM THAT WE NEED TO
13 HAVE A WITNESS, AND THAT WE WOULD ALSO RESPECTFULLY REQUEST
14 THAT THE COURT TAKE THE MOTION UNDER ADVISEMENT AFTER BOTH
15 COUNSEL HAVE THE TIME TO ARGUE THE MOTION.

16 THE COURT: ALL RIGHT. MS. SISKIND.

17 MS. SISKIND: YOUR HONOR, CERTAINLY WE OPPOSE THE
18 MOTION AND WE'LL ARGUE AT THE APPROPRIATE TIME.

19 THE COURT: ALL RIGHT. THANK YOU.

20 AS I UNDERSTAND IT, JUST FOR THE RECORD, MR. SCHAINBAUM,
21 YOU HAVE A WITNESS YOU WOULD LIKE TO CALL --

22 MR. SCHAINBAUM: CORRECT.

23 THE COURT: -- IN YOUR CASE IN CHIEF. THAT WITNESS
24 IS HERE AND THAT WITNESS, APPARENTLY, HAS FLOWN A GREAT
25 DISTANCE AND IS UNAVAILABLE, UNAVAILABLE UNTIL LATE NEXT WEEK.

1 MR. SCHAINBAUM: THAT'S CORRECT, YOUR HONOR.

2 THE COURT: AND YOU'D LIKE -- IT'S NOW 4:25 ON
3 FRIDAY AFTERNOON. YOU HAVE INDICATED THAT YOU WOULD LIKE TO
4 CALL THIS WITNESS FOR THE WITNESS'S CONVENIENCE TO AT LEAST GET
5 THIS TESTIMONY ON.

6 YOU HAVE TOLD ME AT SIDE-BAR THIS IS A SHORT WITNESS, A
7 BRIEF WITNESS.

8 MR. SCHAINBAUM: THAT'S CORRECT, YOUR HONOR.

9 THE COURT: AND BY CALLING THE WITNESS, YOU'RE
10 PRESERVING YOUR RULE 29 MOTION AND NOT INDICATING THAT YOU
11 ACQUIESCE OR WITHDRAW THAT MOTION IN ANY MANNER.

12 MR. SCHAINBAUM: THAT'S RIGHT, YOUR HONOR. WE DO
13 NOT IN ANY RESPECT, IN ANY MANNER WAIVE OUR RIGHTS UNDER THE
14 RULE 29 MOTION. THIS IS SIMPLY A HOUSEKEEPING ACCOMMODATION
15 FOR WHICH THE DEFENDANT IS GRATEFUL FOR YOUR COURTESY, YOUR
16 HONOR, AND THE COURTESY OF THE GOVERNMENT.

17 THE COURT: ALL RIGHT. THANK YOU. SO YOUR RULE 29
18 MOTION, IT SHOULD BE NOTED THAT YOU HAVE MADE YOUR MOTION AT
19 THE CONCLUSION OF THE GOVERNMENT'S CASE, AND I WILL PERMIT YOU
20 TO PROVIDE ADDITIONAL ARGUMENT FOR THAT MOTION AT ANOTHER TIME.

21 WE WILL TAKE THIS WITNESS, I SUPPOSE, TECHNICALLY OUT OF
22 ORDER IN THE CONTEXT OF YOUR RULE 29 MOTION, BUT WE'LL ALLOW
23 THAT TESTIMONY TO BE RECEIVED NOW AT THIS TIME.

24 MR. SCHAINBAUM: OKAY.

25 MS. SISKIND: AND, YOUR HONOR, COULD I JUST CLARIFY

1 FOR THE RECORD, IN THE EVENT WHEN WE GO OVER THE EXHIBITS THERE
2 IS SOMETHING THAT IS MISSING, WILL WE BE PERMITTED TO REOPEN
3 AND ADD THAT?

4 THE COURT: YES.

5 MS. SISKIND: THANK YOU, YOUR HONOR.

6 MR. SCHAINBAUM: I WOULD SAY THAT I AGREE WITH THAT
7 BECAUSE I THINK -- I'M UNCLEAR AS TO THE STATE OF CALIFORNIA
8 EXHIBITS WHERE THEY WERE CERTIFIED AND THE COURT QUASHED THE
9 APPEARANCE OF THE PERSON.

10 THE COURT: WE'LL REVIEW ALL OF THOSE EXHIBITS AT
11 THE APPROPRIATE TIME.

12 MR. SCHAINBAUM: ALL RIGHT. THANK YOU, YOUR HONOR.
13 COULD WE HAVE A FEW MINUTE BREAK? I WANT TO --

14 THE COURT: WE CAN HAVE ABOUT A THREE-MINUTE BREAK.

15 MR. SCHAINBAUM: THANK YOU.

16 (RECESS FROM 4:28 P.M. UNTIL 4:32 P.M.)

17 (JURY IN AT 4:32 P.M.)

18 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD IN
19 THE DESAI MATTER. COUNSEL IS PRESENT. MS. SISKIND IS NOT
20 PRESENT, BUT I'M TOLD SHE WILL JOIN US IN JUST A MOMENT.

21 MR. KENNEDY, CAN WE PROCEED?

22 MR. KENNEDY: WE CAN, YOUR HONOR. I SPOKE TO
23 MS. SISKIND AND SHE'LL BE BACK IN A MINUTE.

24 THE COURT: DOES THE DEFENSE WISH TO PROCEED?

25 MR. SCHAINBAUM: YES. WE'LL CALL ANKIL LALU. I

DIRECT LALU
1 APOLOGIZE IF I MISPRONOUNCED IT.

2 THE COURT: OKAY. MR. LALU, IF YOU WOULD COME
3 FORWARD, PLEASE. IF YOU CAN STAND AND FACE OUR COURTROOM
4 DEPUTY HERE WHILE YOU RAISE YOUR RIGHT HAND. SHE HAS A
5 QUESTION FOR YOU.

6 (DEFENDANT'S WITNESS, ANKIL LALU, WAS SWORN.)

7 THE WITNESS: YELL.

8 THE COURT: LET ME INVITE YOU TO HAVE A SEAT HERE,
9 SIR. PLEASE MAKE YOURSELF COMFORTABLE. FEEL FREE TO ADJUST
10 THE CHAIR AND THE MICROPHONE AS YOU NEED, AND I'LL ENCOURAGE
11 YOU TO SPEAK DIRECTLY INTO THAT MICROPHONE AS YOU CAN.

12 WHEN YOU'RE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME
13 AND SPELL IT, PLEASE.

14 THE WITNESS: SURE. MY NAME IS ANKIL LALU, FIRST
15 NAME A-N-K-I-L, LAST NAME L-A-L-U.

16 THE COURT: COUNSEL.

17 **DIRECT EXAMINATION**

18 BY MR. SCHAINBAUM:

19 Q. CAN YOU STATE FOR THE RECORD WHERE YOU RESIDE?

20 A. TUSCAN, CALIFORNIA.

21 Q. AND CAN YOU STATE FOR THE RECORD WHAT YOUR PROFESSIONAL OR
22 BUSINESS OCCUPATION IS?

23 A. REAL ESTATE.

24 Q. AND ARE YOU IN THE REAL ESTATE BUSINESS WITH ANY RELATIVE?

25 A. IT'S A FAMILY BUSINESS.

Q. AND WHO IS IN THE FAMILY BUSINESS?

A. MYSELF, MY SISTER, AND MY FATHER.

Q. AND DID THERE COME AN OCCASION WHEN YOU WERE PRESENT AND REPRESENTATIVES OF HSBC BANK VISITED YOUR REAL ESTATE OFFICE?

A. YES.

Q. AND WHEN WAS THAT?

A. I CAN'T REMEMBER THE EXACT DATE, BUT IT WAS EITHER LATE SOMETIME IN 2006 OR LATE INTO 2007.

Q. AND DO YOU RECALL WHAT THE PURPOSE WAS FOR THE VISIT BY THE HSBC BANKERS?

A. YEAH. TO MY RECOLLECTION, I THINK THEY WERE OPENING UP A BRANCH SOMEWHERE IN CALIFORNIA AND I THINK THEY WERE JUST OUT LOOKING FOR BUSINESS.

Q. AND WHEN YOU SAY "OUT LOOKING FOR BUSINESS," CAN YOU BE MORE PRECISE AS TO WHAT THE SUBJECT OF THE MEETING WAS?

A. YEAH, COLLECTING DEPOSITS FROM NONRESIDENT INDIANS.

Q. EXCUSE ME.

A. COLLECTING DEPOSITS FROM NONRESIDENT INDIANS.

Q. AND ARE YOU AND YOUR FATHER NONRESIDENT INDIANS?

A. YES.

Q. AND WERE YOU PRESENT AT THIS MEETING?

A. YES.

Q. AND CAN YOU DESCRIBE THE IDENTITY OF THE HSBC BANKERS?

A. THEIR NAMES?

Q. YES.

1 A. YES. IT WAS MAYUR PATNI, VANDANA KATJU, AND CHAITALI
2 KHABY.

3 THE COURT: CAN YOU SPELL THE LAST INDIVIDUAL,
4 PLEASE.

5 THE WITNESS: I'M GOING TO TRY. I'M NOT SURE IF I
6 CAN.

7 THE COURT: THANK YOU.

8 THE WITNESS: I'M NOT SURE IF THIS IS ACCURATE, BUT
9 K-H-A-B-Y. SOMETHING LIKE THAT. I DON'T KNOW IF THAT'S
10 ACCURATE.

11 THE COURT: AND THE LAST NAME, DO YOU KNOW?

12 THE WITNESS: THAT WAS THE LAST NAME. DO YOU NEED
13 THE FIRST NAME?

14 THE COURT: PLEASE.

15 THE WITNESS: C-H-A-I-T-A-L-I.

16 THE COURT: THANK YOU.

17 BY MR. SCHAINBAUM:

18 Q. AND WHAT WAS THE SUBJECT OF THE MEETING? YOU INDICATED
19 THAT THE OVERALL SUBJECT WAS TO COLLECT DEPOSITS?

20 A. RIGHT.

21 Q. AND DID THEY MAKE ANY STATEMENTS REGARDING HOW THEY WERE
22 GOING TO COLLECT THE DEPOSITS?

23 A. RIGHT. SO THEY MENTIONED -- AT LEAST THE THEME WAS THAT
24 THERE WAS A TAX TREATY BETWEEN THE U.S. AND INDIA WHEREIN ANY
25 DEPOSITS IN INDIA, THE INTEREST EARNED THERE IS NOT TAXABLE IN

CROSS EXAMINATION

1 THE UNITED STATES UNTIL THOSE FUNDS ARE BROUGHT BACK TO THE
2 UNITED STATES.

3 Q. DID THEY REFER TO TAXES BEING WITHHELD AT THE SOURCE?

4 A. I DON'T REMEMBER.

5 Q. AND DID THEY REFER TO WHETHER OR NOT HSBC BANK WOULD BE
6 ISSUING 1099'S?

7 A. I DON'T REMEMBER.

8 Q. SO WHAT YOU REMEMBER IS THAT THEY SAID IF YOU PUT U.S.
9 DOLLAR DEPOSITS IN INDIA, THERE WAS NO TAX CONSEQUENCES IN THE
10 U.S.?

11 A. ON THE INTEREST COMPONENT, ON THE INTEREST INCOME.

12 Q. AND WAS THERE ANYTHING ELSE SAID?

13 A. NO. THAT WAS WHAT I REMEMBER.

14 Q. OKAY. AND, AGAIN, WHO DID YOU SAY WAS PRESENT?

15 A. IT WAS MAYUR PATNI, VANDANA KATJU, CHAITALI KHABY.

16 Q. AND YOU WERE THERE?

17 A. I WAS THERE.

18 Q. AND WHO ELSE WAS THERE?

19 A. MY FATHER.

20 MR. SCHAINBAUM: OKAY. I HAVE NO FURTHER QUESTIONS.

21 THE COURT: ANY CROSS-EXAMINATION?

22 MR. KENNEDY: BRIEFLY, IF I MAY, YOUR HONOR.

23 THE COURT: YES.

24 **CROSS-EXAMINATION**

25 BY MR. KENNEDY:

CROSS LALU

1 Q. GOOD AFTERNOON, MR. LALU. IS IT FAIR TO SAY, IF THIS WAS
2 2006 OR 2007, WE'RE TALKING SIX OR SEVEN YEARS AGO?

3 A. RIGHT.

4 Q. AND IS THAT A REASON WHY YOU CAN'T REMEMBER A LOT OF THIS
5 CONVERSATION?

6 A. WELL, THE DETAILS I COULDN'T.

7 Q. A LOT OF TIME HAS PASSED?

8 A. SURE.

9 Q. AND IS IT FAIR TO SAY THAT YOU WERE ABOUT 26 AT THE TIME
10 OF THAT CONVERSATION?

11 A. YEAH. I'M 32 RIGHT NOW, SO, YOU KNOW.

12 Q. AND TELL THE MEMBERS OF THE JURY AGAIN WHERE THE -- WHAT
13 TOWN, WHAT PHYSICAL PLACE THIS TOOK PLACE IN.

14 A. IRVINE, CALIFORNIA.

15 Q. AND CAN YOU TELL THE MEMBERS OF THE JURY WHEN THESE
16 BANKERS WERE THERE TO DISCUSS A BANK ACCOUNT, IT WAS YOUR
17 FATHER'S ACCOUNT AND NOT YOURS, RIGHT?

18 A. MY FATHER'S ACCOUNT.

19 Q. AND YOU JUST HAPPENED TO BE PRESENT AT THIS MEETING?

20 A. YES.

21 Q. AND WHEN YOU WERE TESTIFYING ON DIRECT, YOU -- AND CORRECT
22 ME IF I'M WRONG, I THINK YOU USED THE WORD, AND I WROTE IT DOWN
23 "THEY" MENTIONED THERE WAS A TAX TREATY AND SO ON AND SO FORTH.
24 YOU DIDN'T IDENTIFY WHO STATED THIS.

25 A. YEAH, IT WAS -- I DON'T REMEMBER IF THERE WAS SPECIFICALLY

CROSS EXAMINATION

1 ONE PERSON THAT MENTIONED THE TAX TREATY, BUT I USED "THEY"
2 BECAUSE COLLECTIVELY THOSE THREE WERE THERE AT THE MEETING SO I
3 JUST CLUMPED THEM TOGETHER.

4 Q. SO YOU JUST DON'T RECALL --

5 A. WHO EXACTLY SAID IT.

6 Q. YEAH?

7 A. YES.

8 Q. AND DO YOU REMEMBER WHAT TIME OF YEAR IT WAS? WHAT MONTH?

9 A. LATE 2006, '07 IS THE BEST OF MY KNOWLEDGE.

10 Q. AND DID THEY SAY ANYTHING TO YOU ABOUT THE EFFECT THAT YOU
11 DON'T HAVE TO REPORT A FOREIGN BANK ACCOUNT ON YOUR INCOME TAX
12 RETURN?

13 A. NOT THAT I RECALL.

14 Q. DID THEY SAY ANYTHING TO YOU ABOUT NOT HAVING TO REPORT A
15 FOREIGN BANK ACCOUNT ON A BOX AT THE BOTTOM OF A SCHEDULE B?

16 A. NOT THAT I RECALL.

17 Q. YOU'RE TESTIFYING HERE TODAY AND YOU'RE AWARE, CORRECT,
18 THAT YOUR FATHER IS ACTUALLY UNDER A CRIMINAL INVESTIGATION FOR
19 FAILING TO FILE FOREIGN BANK ACCOUNT INFORMATION WITH THE U.S.
20 GOVERNMENT?

21 A. YES.

22 Q. AND YOU OBVIOUSLY KNOW ABOUT THAT AS YOU SIT HERE TODAY,
23 RIGHT?

24 A. YES.

25 MR. KENNEDY: I DON'T HAVE ANY FURTHER QUESTIONS.

1 MR. SCHAINBAUM: NO. THANK YOU.

2 THE COURT: AND MAY THIS WITNESS BE EXCUSED?

3 MR. SCHAINBAUM: YES.

4 MS. SISKIND: YES, YOUR HONOR.

5 THE COURT: THANK YOU, SIR. YOU'RE EXCUSED. THANK
6 YOU.

7 DOES THE DEFENSE HAVE ANY OTHER WITNESSES TO OFFER TODAY?

8 MR. SCHAINBAUM: NO.

9 THE COURT: ALL RIGHT. THIS WOULD BE A GOOD TIME TO
10 TAKE OUR WEEKEND RECESS THEN, COUNSEL?

11 MS. SISKIND: YES, YOUR HONOR.

12 MR. SCHAINBAUM: YES.

13 THE COURT: LET'S DO THAT. WE'LL TAKE OUR WEEKEND
14 RECESS, LADIES AND GENTLEMEN. THANK YOU FOR YOUR PATIENCE.
15 WE'LL BE IN SESSION MONDAY, THIS COMING MONDAY AT 9:00 A.M.
16 WE'LL CALL YOU UP AT 9:00 A.M. HAVE A GOOD WEEKEND. THANK YOU
17 SO MUCH.

18 (JURY OUT AT 4:41 P.M.)

19 THE COURT: THE RECORD SHOULD REFLECT THAT THE JURY
20 HAS LEFT THE COURTROOM.

21 ANYTHING ELSE, COUNSEL?

22 MR. SCHAINBAUM: UNLESS YOU WANT TO HAVE A MOTION OR
23 THE RULE 29 ARGUMENT NOW, OR MAYBE MONDAY AT 8:30.

24 MS. SISKIND: I HAVE A SLIGHT PREFERENCE FOR NOW. I
25 HAVE A FEELING IF WE START AT 8:30 ON MONDAY, THE JURY IS GOING

1 TO BE DELAYED STARTING AT 9:00.

2 THE COURT: WELL, WHY DON'T WE PROCEED WITH THE
3 ARGUMENT NOW?

4 MR. SCHAINBAUM, DO YOU HAVE AN ARGUMENT FOR YOUR RULE 29
5 MOTION?

6 MR. SCHAINBAUM: RIGHT.

7 WELL, I'D LIKE TO START WITH THE FACT THAT THIS IS AN
8 EIGHT COUNT CRIMINAL TAX FELONY COUNTS AND THE USUAL RULES IN A
9 CRIMINAL CASE PREVAIL HERE.

10 THE DEFENDANT IS PRESUMED INNOCENT AND THE GOVERNMENT MUST
11 PROVE EACH AND EVERY ELEMENT OF THE CRIME BEYOND A REASONABLE
12 DOUBT.

13 SO LOOKING -- GOING BACKWARDS FORWARD COUNTS SIX, SEVEN,
14 AND EIGHT ARE THE FBARS. WE BELIEVE THAT THE FBARS -- THERE
15 WAS NO WILLFUL FAILURE TO FILE FBARS BECAUSE UNDER THE
16 CIRCUMSTANCES TWO THINGS:

17 THE FBARS WERE NOT REQUIRED TO FILE; AND THE EVIDENCE
18 SHOWS THERE'S A GREAT DEAL OF CONFUSION, COMPLEXITY TO NEGATE
19 THE WILLFULNESS.

20 BUT ON A LEGAL MATTER, BECAUSE HSBC HAD A REPRESENTATIVE
21 OFFICE AND BECAUSE RIGHT ON THE FBAR INSTRUCTIONS IT SAID IF
22 YOU HAVE A FOREIGN BANK THAT HAS A BRANCH, AGENCY, AGENT IN THE
23 UNITED STATES YOU DON'T NEED TO FILE AN FBAR.

24 I THINK THE LAST WITNESS TESTIFIED THAT THEY ALL SAID THAT
25 THEY WERE ALL AGENTS OF HSBC INDIA.

1 SO AS A MATTER OF LAW, FBARS WERE NOT REQUIRED TO BE
2 FILED. AND -- SO ON THAT GROUND ALONE WE BELIEVE THAT WE'RE
3 ENTITLED TO A JUDGMENT OF ACQUITTAL ON RULE -- ON COUNTS SIX,
4 SEVEN, AND EIGHT.

5 THE REGULATIONS SUPPORT US 31 U.S.C. SECTION 5314 AND THE
6 C.F.R., 31 C.F.R. SECTION 1010.350.

7 SO THE REGULATION PROVIDES THAT THE REPRESENTATIVE BANK
8 BEING IN FREMONT AND NEW YORK ARE IN THE UNITED STATES AND
9 THAT'S NOT A FOREIGN BANK BY DEFINITION UNDER THE REGULATIONS.

10 THE GENERAL DEFINITION SUPPORTING THAT IS ALSO 31 C.F.R.
11 SECTION 1010.100, AND THE RELEVANT SECTION IS PARENTHESIS
12 LITTLE U.

13 SO WHEN YOU TAKE THIS ALL TOGETHER, THE INSTRUCTIONS AND
14 THE FBAR, LOOKING AT GOVERNMENT'S EXHIBITS 9 AND 10, THAT AS A
15 MATTER OF LAW NO FBAR WAS REQUIRED TO BE FILED AND THE
16 DEFINITION OF THE FOREIGN BANK EXCLUDES THE TERM DOES NOT
17 INCLUDE AN AGENT, AGENCY, BRANCH, OR OFFICE WITHIN THE UNITED
18 STATES OF A BANK ORGANIZED UNDER FEDERAL LAW, AND THAT'S RIGHT
19 OUT OF THE LAW.

20 SO THE GOVERNMENT IN THAT REGARD HAS FAILED TO SUSTAIN ITS
21 BURDEN OF PROOF BEYOND A REASONABLE DOUBT, AND IT'S REALLY A
22 PRETTY CLEAR MATTER OF LAW ON SIX, SEVEN, EIGHT -- COUNTS SIX,
23 SEVEN, AND EIGHT.

24 NOW, THE EVIDENCE HERE ALSO, IF YOU WANT TO LOOK FURTHER,
25 WHICH I DON'T THINK YOU HAVE TO BECAUSE I THINK THE LAW IS

1 PRETTY CLEAR, THAT THE TESTIMONY OF VANDANA KATJU SAYING THAT
2 SHE WAS A LIAISON ON PAGE 366, LINE 5, THE SEPTEMBER OF
3 SEPTEMBER 11; AND PAGE 370, LINE 3; PAGE 370, LINE 16; PAGE
4 498, LINE 1; PAGE 631, LINE 13; PAGE 631, LINE 16; PAGE 633,
5 LINE 10; PAGE 633, LINE 10; AND PAGE -- WELL, IT'S THE SAME
6 CITATION OVER AND OVER AGAIN.

7 NOW, IF YOU GO TO THE TESTIMONY OF AARTI KUMAR, SHE SAID I
8 WAS EMPLOYED BY HSBC REPRESENTATIVE OFFICE IN FREMONT, PAGE
9 990, LINE 7; AND AS AN EMPLOYEE THERE, WE WERE ALSO CONNECTED
10 TO HSBC UNITED STATES. MY CONTRACT LETTER DID MENTION THAT I
11 WAS AN EMPLOYEE OF HSBC U.S. AND EXPLAINED THAT CONNECTION WITH
12 HSBC U.S.

13 SO I WOULD LOOK TO -- AND THEN HER ANSWER -- AND HER
14 LINKEDIN PAGE SAID, "IF MY UNDERSTANDING IS CORRECT, I THINK IT
15 SAID, IT WAS SAID THAT THAT WHICH ALLOWED US TO WORK IN THE
16 UNITED STATES, EVEN THOUGH WE WERE PART OR EVEN THOUGH WE HAD
17 DIRECT REPORTING TO HSBC INDIA" SUPPORTS ALL OF THE FACTUAL
18 FOUNDATION FOR THE LAW FOR THE REG UNDER WHY THE BRANCH IS NOT
19 A BRANCH -- IT'S A BRANCH OF A FOREIGN BANK AND THEREFORE
20 EXCLUDES THE REQUIREMENT OF FILING AN FBAR.

21 ALSO, YOUR HONOR, IF YOU LOOK AT PAGE 1176, LINE 3, HER
22 ANSWER TO THE QUESTION "AND REPRESENTED WHICH BANK?

23 "I HAD DIRECT REPORTING TO MY MANAGERS AND MY MANAGERS
24 WERE DIRECTLY REPORTING TO HSBC INDIA. SO I WAS AN HSBC
25 INDIA," WHICH FITS THE DEFINITION OF REPRESENTATIVE AND AGENT

1 AND WHICH FITS THE DEFINITION OF THE REG THAT I CITED, WHICH IS
2 PART OF 31 C.F.R. 1010.100, SUBPARAGRAPH U, PARENTHESIS LITTLE
3 U.

4 NOW, AS TO COUNTS FOUR AND FIVE, THAT'S THE COUNTS WHERE
5 MR. DESAI IS CHARGED WITH AIDING AND ABETTING FILING A FALSE
6 TAX RETURN FOR HIS ADULT CHILDREN, NEAL AND AMI.

7 AND IT'S OUR CONTENTION, EVEN THOUGH THERE SEEMS TO BE
8 SOME AMBIGUITY IN THE RECORD THAT THERE ARE ONLY TWO BANK
9 ACCOUNTS, THERE MAY BE MORE LISTED OUT, BUT THEY'RE SUBACCOUNTS
10 OF MR. DESAI AND MRS. DESAI'S BANK ACCOUNTS AND IT'S CLEAR THAT
11 ALL OF THE MONEY, ALL OF THE SOURCES OF THE MONEY COME FROM
12 MR. DESAI.

13 SO IN SUBSTANCE, IF THAT'S THE CRITERIA, AND IT SHOULD BE,
14 THE ECONOMIC SUBSTANCE, EVERYTHING IS MR. DESAI AND MRS. DESAI.
15 IT'S SUBSTANCE. THERE'S AN ADAGE IN THE TAX WORLD, SUBSTANCE
16 OVER FORM.

17 AND IF YOU APPLY THAT CRITERIA HERE, IT'S CLEAR THAT THE
18 BANK ACCOUNTS, ANY WAY YOU LOOK AT THEM, BELONG TO MR. AND
19 MRS. DESAI AND THEY ADDED THEIR ADULT CHILDREN TO THOSE
20 ACCOUNTS.

21 AND THEY WERE MANAGED OUT OF THE REPRESENTATIVE OFFICE IN
22 FREMONT.

23 SO IT'S OUR POSITION THAT IF ANYTHING HAD TO BE REPORTED,
24 I SAY "IF," IT SHOULD HAVE BEEN ON MR. AND MRS. DESAI'S TAX
25 RETURNS.

1 IF THERE WAS TO BE A FILING OF AN FBAR, IT SHOULD HAVE
2 COME OUT OF MR. AND MRS. DESAI'S TAX RETURNS. SO IT CAN'T BE A
3 FALSE TAX RETURN BECAUSE THEY WERE NOT THE ULTIMATE ECONOMIC
4 BENEFICIARY. AND JUST BECAUSE THEY HAD THEIR NAMES ON THERE
5 DOESN'T MEAN THAT THEY HAD CONTROL OF THOSE ACCOUNTS BECAUSE
6 THERE'S NO EVIDENCE THAT THEY DID.

7 AND SO IF THEY DID NOT REALLY OWN THE ACCOUNTS
8 ECONOMICALLY, IF IN SUBSTANCE THE ACCOUNTS ECONOMICALLY BELONG
9 TO MR. AND MRS. DESAI, IF EVERYTHING IT'S ON COUNTS ONE, TWO
10 AND THREE. COUNTS FOUR AND FIVE ARE KIND OF MOOT IN THIS WHOLE
11 UNIVERSE.

12 AND I SAY THAT THE REAL PROBLEM HERE IS COUNTS ONE AND TWO
13 AND THREE. THERE'S WHERE YOU COME DOWN TO.

14 COUNTS FOUR AND FIVE SHOULD GO AWAY BECAUSE IT ALL BELONGS
15 TO MR. AND MRS. DESAI, AND THEN YOU WOULD HAVE TO DEAL WITH
16 COUNTS ONE, AND TWO, AND THREE.

17 I MEAN, BEING A CRIMINAL CASE, THE ESSENCE OF THE CRIMINAL
18 CONDUCT IS WILLFULNESS.

19 NOW, WILLFULNESS CAN BE PROVEN BY DIRECT EVIDENCE OR
20 INDIRECT EVIDENCE OR CIRCUMSTANTIAL EVIDENCE.

21 SO WHAT DO WE HAVE ON COUNTS ONE, TWO, AND THREE? IF THE
22 COURT IS IMPRESSED WITH THE NUMBERS, YOU CAN'T GET OVER THAT.
23 THIS IS BIG NUMBERS.

24 MR. OERTEL, WHETHER HIS COMPUTATIONS ARE CORRECT OR NOT,
25 THEY'RE STILL BIG NUMBERS.

1 BUT THAT'S NOT THE POINT. THE POINT IS THAT LEGALLY WHAT
2 DOES IT ALL MEAN?

3 IF, IN FACT, AS YOU JUST HEARD THIS TESTIMONY FROM THIS
4 WITNESS, THERE WAS THE SCHEME AND THE SCHEME WAS TO ENTICE
5 VICTIMS TO PUT THEIR MONEY IN HSBC INDIA.

6 THE COURT: I CAN'T CONSIDER THIS WITNESS'S
7 TESTIMONY.

8 MR. SCHAINBAUM: NO, THAT'S RIGHT. THANK YOU FOR
9 THAT.

10 OKAY. DON'T CONSIDER IT. I'LL JUST ARGUE FROM WHAT I
11 KNOW.

12 AND FROM WHAT I KNOW IS THAT THE CIRCUMSTANTIAL EVIDENCE
13 OF WHAT HAS HAPPENED THROUGH THE TESTIMONY, IF YOU BELIEVE THE
14 TESTIMONY OF VANDANA KATJU AND IF YOU BELIEVE THE TESTIMONY OF
15 AARTI KUMAR, THEY WERE HERE BASICALLY DOING NOTHING EXCEPT
16 TELEPHONING, MARKETING, OR HAVING SOCIAL EVENTS.

17 BUT THE ESSENCE OF THE ONE, TWO, THREE COUNT OF FILING
18 FALSE TAX RETURNS, IT'S CLEAR FROM SCHEDULE B THAT, ANY WAY YOU
19 LOOK AT IT, MR. DESAI REPORTS LOTS OF INTEREST INCOME AND LOTS
20 OF -- A COUPLE OF THOSE BANKS ARE FOREIGN BANKS. AND THEN HE
21 CHECKS THE BOX NO.

22 IT CREATES REASONABLE DOUBT AS TO WILLFULNESS.

23 ANOTHER REASONABLE DOUBT AS TO WILLFULNESS IS THE
24 CONTINUOUS SET OF DOCUMENTS THAT THE GOVERNMENT CLAIMS SHOWS
25 WILLFULNESS, THOSE CP NOTICES. THE CP NOTICES REALLY SHOW,

1 TOGETHER WITH THE TRANSCRIPTS, THAT MR. DESAI IS OBEDIENT. HE
2 GETS A NOTICE, HE DEALS WITH IT, AND HE PAYS.

3 NOW, THE I.R.S. KNEW FROM THE VERY BEGINNING THAT THERE
4 WAS A FOREIGN BANK ACCOUNT. THEY DID NOTHING. YEAR AFTER YEAR
5 THEY DIDN'T SAY, LOOK, IN ANY KIND OF NOTICE, YOU HAVE A
6 FOREIGN BANK ACCOUNT, FILE AN FBAR. THEY DIDN'T DO THAT.

7 YEAR AFTER YEAR THEY SENT HIM A NOTICE AND HE RESOLVES IT.
8 THE TRANSCRIPTS ARE PRIMA FACIE EVIDENCE OF MR. DESAI'S LACK OF
9 WILLFULNESS WHEN TAKEN TOGETHER WITH THE CP NOTICES. IT'S NOT
10 THE OTHER WAY. IT'S THE LACK OF WILLFULNESS.

11 SO THE PROBLEM IS THAT THE NUMBERS ARE LARGE, BUT THAT
12 DOESN'T REALLY LEGALLY MEAN ANYTHING. IT'S IRRELEVANT.

13 SO THE CHARGE HERE IS AS IN COUNTS FOUR AND FIVE, THAT THE
14 RETURNS ARE FALSE FOR TWO REASONS: ONE, THERE IS SUBSTANTIAL
15 OMISSION OF INCOME; TWO, THE BOX IS CHECKED "NO" WHEN IT SHOULD
16 HAVE BEEN CHECKED YES.

17 BUT THAT DOESN'T DO IT. YOU HAVE GOT TO HAVE THE ELEMENT
18 OF WILLFULNESS. YOU HAVE TO SHOW THE ELEMENT OF WILLFULNESS
19 AND THE GOVERNMENT IS TRYING TO SHOW THAT THROUGH THE LARGE
20 NUMBERS.

21 ON THE OTHER HAND, THE CLEAR EVIDENCE IS THAT MR. DESAI
22 KEEPS REPORTING NUMBERS THAT ARE NOT REALLY ALL OF THE TIME
23 CORRECT. IT DOESN'T SHOW YOU -- I MEAN, IF IT YOU WERE
24 INTENTIONALLY TRYING TO BE WILLFULNESS, YOU WOULD GO OUT OF
25 YOUR WAY TO CONCEAL, HIDE, AND DO WHATEVER IT IS. THERE'S NO

1 EVIDENCE THAT THAT IS HAPPENING.

2 THERE'S EVIDENCE IN THE RECORD, WHETHER IT'S CONFLICTING
3 OR NOT, THAT MR. DESAI RELIED ON SOMETHING BECAUSE WHY WOULD --
4 AND THIS IS, OF COURSE, TO SHOW WHETHER, TAKING THE CASE IN THE
5 MOST FAVORABLE LIGHT TO THE GOVERNMENT, WHICH IS THE STANDING
6 FOR THIS RULE, WHY WOULD A REASONABLE JURY SAY TO THEMSELVES,
7 YEAR AFTER YEAR HE GETS THESE NOTICES AND YET HE HAS THESE
8 ACCOUNTS AND HE DOESN'T DO ANYTHING? IS THE MAN CRAZY OR HAS
9 HE REASONABLY BEEN TOLD SOMETHING? OR SOMETHING HAS INTERCEDED
10 TO SAY THAT HE DOESN'T HAVE TO REPORT IT?

11 BECAUSE THE PATTERN HERE FROM THE TAX RETURNS, THE CP
12 NOTICES, AND WHAT WAS HAPPENING SHOWS THAT THE GOVERNMENT
13 CANNOT --

14 THE COURT: IT APPEARS, FOR THE RECORD, IT APPEARS A
15 JUROR OPENED THE DOOR, POKED HER HEAD IN, AND CLOSED THE DOOR.

16 MS. GARCIA IS GOING TO --

17 MR. SCHAINBAUM: DO YOU WANT ME TO WAIT?

18 THE COURT: YEAH, WHY DON'T YOU JUST FOR A SECOND.

19 (PAUSE IN PROCEEDINGS.)

20 THE COURT: WHY DON'T YOU CONTINUE, MR. SCHAINBAUM?

21 MR. SCHAINBAUM: OKAY. SO COMING DOWN TO
22 COUNTS ONE, TWO, AND THREE, AS WELL AS FOUR AND FIVE, BUT JUST
23 FOR THE PURPOSES OF WHAT THE GOVERNMENT ALLEGED MAKES THE
24 RETURNS FALSE, THE OMISSION OF THE INCOME, INTEREST INCOME, AND
25 THE CHECKING OF THE BOX "NO."

1 THERE'S NO EVIDENCE HERE TO SHOW THAT THE AMOUNT OF
2 INTEREST ALLEGED EARNED IN THE FOREIGN BANK ACCOUNTS ARE
3 ACCURATE, THAT HE WOULD KNOW BECAUSE THERE WERE NO FORM 1099'S.

4 AND WE KNOW THAT FROM THE TESTIMONY OF MR. OERTEL, WHICH
5 CREATES REASONABLE DOUBT THAT HE EVEN COULD CALCULATE IT
6 INCORRECTLY. SO YOU CAN INFER THAT THE TAXPAYER COULD NOT
7 CORRECTLY DETERMINE INCOME, BUT THAT'S NOT ENOUGH.

8 THE REST OF IT IS WHY WASN'T THERE ANYTHING ON THERE, AND
9 THE QUESTION IS THE GOVERNMENT HASN'T SUPPLIED ANY DIRECT
10 EVIDENCE OR ANY EVIDENCE THAT HE DIDN'T KNOW AND HE WENT OUT OF
11 HIS WAY AND IN SOME OF THE CASES WHERE YOU SET UP A FOUNDATION,
12 YOU SET UP A TRUST, YOU SET UP A DOUBLE WHATEVER, NONE OF THAT
13 IS HERE.

14 HE WENT AND DEALT WITH BANKERS IN THE U.S. WHO DID A LOT
15 OF THINGS, INCLUDING COLLECTING DEPOSITS AND MOVING THEM
16 AROUND.

17 AND SO A JUROR COULD SAY, LOOKING AT THE MOST FAVORABLE
18 WAY, THE GOVERNMENT HAS NOT PROVEN BEYOND A REASONABLE DOUBT
19 THAT HE WAS WILLFUL. HE HAD A SPECIFIC INTENTION TO DECEIVE
20 THE GOVERNMENT AND IN MAKING A FALSE RETURN BY OMITTING THIS
21 INCOME BECAUSE THIS EVIDENCE SHOWS TO THE CONTRARY. HE'S
22 PUTTING ON THE RETURN INCOME FROM ALL OF THE 1099'S THAT HE'S
23 GETTING.

24 AND IT'S CLEAR BEYOND A REASONABLE DOUBT HE DID NOT GET AN
25 INTEREST INCOME FORM 1099 FROM THE HSBC BANK.

1 AND SO YOU CAN -- FROM THE E-MAILS THAT ARE IN EVIDENCE
2 AND THE COLLECTION OF ACTIVITIES, YOU CAN INFER THAT HE HAD A
3 GOOD FAITH BELIEF THAT HE DID NOT HAVE TO REPORT IT.

4 AND THERE'S NO CONTRARY EVIDENCE OTHER THAN AN INFERENCE
5 THAT -- WHICH YOU CAN TAKE INTO CONSIDERATION EVEN THOUGH WE
6 DON'T HAVE DIRECTLY IN EVIDENCE WHY THE BANK CLOSED, BUT WE DO
7 KNOW INDIRECTLY THAT THEY WERE INVOLVED IN KIND OF AN ACTIVITY
8 THAT WAS NOT LEGALLY SANCTIONED AND ULTIMATELY BECAUSE THEY
9 PROMPTLY CLOSED THE BANK THREE YEARS AFTER THEY STARTED.

10 SO I THINK SUMMARIZING, SIX, SEVEN, AND EIGHT, FBARS WERE
11 NEVER REQUIRED UNDER THE FACTS AND CIRCUMSTANCES. THOSE COUNTS
12 SHOULD GO.

13 COUNTS FOUR AND FIVE DEPEND REALLY ON THE WILLFULNESS TO A
14 FURTHER EXTENT, BUT THE REAL POINT IS THAT ALL OF THE INTEREST
15 IN THE BANK BELONGS TO MR. AND MRS. DESAI.

16 SO EVERYTHING REALLY COMES DOWN TO THE CORE, WHAT ABOUT
17 COUNTS ONE, TWO, AND THREE, AND YOU HAVE TO LOOK AT THE
18 TOTALITY OF THE RECORD, AND I DON'T BELIEVE GIVEN LOOKING AT
19 THE EVIDENCE IN THE MOST FAVORABLE LIGHT TO THE GOVERNMENT WHAT
20 A REASONABLE JURY COULD CONCLUDE, THAT THEY COULD CONCLUDE THAT
21 MR. DESAI IS GUILTY BEYOND A REASONABLE DOUBT OF COUNTS ONE,
22 TWO, AND THREE, FOUR, FIVE, SIX, SEVEN, AND EIGHT.

23 THANK YOU, YOUR HONOR.

24 THE COURT: THANK YOU, MR. SCHAINBAUM.

25 MS. SISKIND, DO YOU HAVE A RESPONSE?

1 MS. SISKIND: YES, YOUR HONOR.

2 YOUR HONOR, MR. SCHAINBAUM ACCURATELY CITED THE STANDARD
3 THAT THE COURT IS GUIDED BY AND THAT'S TO REVIEW THE EVIDENCE
4 IN THE LIGHT MOST FAVORABLE TO THE GOVERNMENT AND ASK WHETHER
5 ANY RATIONALE TRIER OF FACT COULD FIND THE DEFENDANT GUILTY
6 BEYOND A REASONABLE DOUBT.

7 COUNTS ONE, TWO, AND THREE ARE THE FALSE TAX RETURNS FOR
8 ASHVIN AND NILA DESAI FOR 2007 THROUGH 2009.

9 SEVERAL ELEMENTS OF THIS OFFENSE I DON'T THINK ARE IN
10 DISPUTE THAT THESE ARE THE DEFENDANT'S TAX RETURNS AND THAT
11 THEY WERE SIGNED UNDER PENALTIES OF PERJURY.

12 ANOTHER ELEMENT IS THAT THE TAX RETURNS WERE MATERIALLY
13 FALSE AND THERE ARE TWO MATERIAL FALSITIES ALLEGED IN THE
14 INDICTMENT THAT HAVE BEEN ESTABLISHED BY THE GOVERNMENT'S CASE
15 IN CHIEF. ONE IS THE FAILURE TO REPORT INTEREST INCOME, AND
16 THE SECOND IS THE FAILURE TO RESPOND "YES" TO THE FOREIGN BANK
17 ACCOUNT QUESTION, QUESTION 7A ON THE SCHEDULE B.

18 THE INTEREST INCOME WAS ESTABLISHED BY THE TESTIMONY OF
19 REVENUE AGENT OERTEL. HE TESTIFIED TO HIS CALCULATIONS AND
20 THAT THERE WAS A SUBSTANTIAL AMOUNT OF MONEY GENERATED BY THE
21 ACCOUNTS HELD IN THE NAME OF THE DEFENDANT AND HIS WIFE, NONE
22 OF WHICH APPEARED ON THE TAX RETURN.

23 HE ALSO TESTIFIED THAT THE BALANCE IN THE DEFENDANT'S
24 ACCOUNT EXCEEDED \$10,000, WHICH MEANS THAT HE WAS REQUIRED TO
25 CHECK "YES" IN RESPONSE TO QUESTION 7(A) .

1 THOSE ARE TWO FALSITIES, BOTH OF WHICH WERE ESTABLISHED BY
2 THE GOVERNMENT'S CASE.

3 IN TERMS OF WILLFULNESS, THE QUESTION IS WHETHER THE
4 DEFENDANT WAS AWARE OF HIS LEGAL DUTY TO REPORT INTEREST INCOME
5 FROM HSBC INDIA ON THE TAX RETURN AND TO RESPOND AFFIRMATIVELY
6 TO THE FOREIGN BANK ACCOUNT QUESTION.

7 THE EVIDENCE ESTABLISHED THAT THE DEFENDANTS SELF-PREPARED
8 HIS 2007 THROUGH 2009 TAX RETURNS AND THAT HE REPORTED INTEREST
9 INCOME FROM OTHER SOURCES, INCLUDING SMALL AMOUNTS OF INTEREST
10 INCOME FROM OTHER PLACES, SUGGESTING THAT HE WAS METICULOUS
11 ABOUT THE PREPARATION OF HIS RETURNS.

12 THE EVIDENCE ESTABLISHED THAT THE DEFENDANT KNEW THAT HE
13 HAD FOREIGN BANK ACCOUNTS IN INDIA AND THAT THOSE MANY ACCOUNTS
14 GENERATED INTEREST INCOME. THE E-MAILS AND THE LETTERS AND THE
15 OTHER DOCUMENTS THAT CAME INTO EVIDENCE SHOW THAT THIS WAS A
16 DEFENDANT -- THIS WAS A BANK CUSTOMER WHO ACTIVELY MANAGED HIS
17 ACCOUNTS, WHO STAYED ON TOP OF HIS INVESTMENTS.

18 THERE WAS AN E-MAIL WHERE HE WAS EVEN COMPLAINING ABOUT A
19 \$60 WIRE TRANSFER FEE THAT HE WAS ASSESSED. THIS WAS SOMEONE
20 WHO KNEW WHAT WAS GOING ON WITH HIS MONEY, WHICH MAKES SENSE
21 GIVEN THE AMOUNT OF MONEY THAT HE HAD ON DEPOSIT WITH THE BANK.

22 HE ALSO HAD SUBSTANTIAL CONVERSATIONS -- THE CONVERSATIONS
23 OVER E-MAIL WITH BANKERS ABOUT INTEREST RATES THAT SHOW HIM IN
24 ONE E-MAIL CALLING HIS CONTACT WITH THE STATE BANK OF INDIA AND
25 TRYING TO PLAY ONE BANK OFF OF THE OTHER TO GET A HIGHER RATE

1 OF RETURN ON HIS MONEY.

2 AND THERE WAS TESTIMONY THAT THE DEFENDANT HAD ACCESS TO
3 THE MEANS, EVEN IF HE DIDN'T GET A 1099, HE HAD ACCESS TO
4 INFORMATION TO USE TO REPORT INTEREST INCOME TO THE I.R.S.

5 MS. KATJU TESTIFIED ABOUT THE SIGNIFICANCE OF AN E-MAIL
6 THAT REFERENCED AN INTERNET BANKING I.D. AND A PIN AND A TOKEN
7 I THINK SHE TALKED ABOUT, AND SHE DESCRIBED TO THE JURY WHAT A
8 PERSON COULD ACCESS IN INTERNET BANKING AND SHE SAID ONE OF THE
9 THINGS YOU COULD ACCESS WERE YOUR ACCOUNT STATEMENTS THAT HAD
10 INFORMATION ABOUT YOUR DEPOSITS.

11 THERE WERE ALSO TWO E-MAILS INTRODUCED THROUGH THE
12 TESTIMONY OF MS. KUMAR THAT SHOW SCREEN SHOTS BEING MAILED
13 DIRECTLY TO THE DEFENDANT.

14 SO EVEN IN THE ABSENCE OF 1099'S, THERE WAS A MEANS BY
15 WHICH THE DEFENDANT COULD DETERMINE HOW MUCH INCOME HE HAD IN
16 HIS ACCOUNTS, AND GIVEN THE OTHER EVIDENCE OF HOW HE STAYED ON
17 TOP OF HIS INVESTMENTS, THERE'S SIGNIFICANT EVIDENCE THAT HE
18 WOULD BE ON TOP OF HOW MUCH INTEREST INCOME HE WAS EARNING.

19 THE EVIDENCE ALSO ESTABLISHED THAT THE DEFENDANT WAS
20 FAMILIAR WITH THE FORM 1040 INSTRUCTIONS, AND SPECIFICALLY THE
21 ONE PAGE OF THOSE INSTRUCTIONS THAT TELL TAXPAYERS HOW TO FILL
22 OUT SCHEDULE B, HOW TO REPORT THEIR INTEREST INCOME, HOW TO
23 DETERMINE WHETHER OR NOT THEY HAVE TO CHECK THE BOX, AND WE
24 KNOW THIS BECAUSE EACH OF THE TAX RETURNS IN EXHIBITS 1 THROUGH
25 3, THE PAGE RIGHT AFTER SCHEDULE B IS A COPY OF THE SCHEDULE B

1 INSTRUCTIONS AND THERE'S TESTIMONY THAT THAT PAGE TELLS
2 TAXPAYERS HOW TO FILL OUT THAT FORM ACCURATELY.

3 THE CUSTOMER DECLARATION THE DEFENDANT SIGNED WHEN HE
4 ADDED HIS SON TO HIS ACCOUNT ALSO PROVIDES ADDITIONAL EVIDENCE
5 OF WILLFULNESS BECAUSE IT CONTAINS THE STATEMENT, UNDER CURRENT
6 U.S. TAX LAW, U.S. CITIZENS AND RESIDENTS ARE SUBJECT TO TAX ON
7 THEIR WORLDWIDE INCOME, AND THAT PUT THE DEFENDANT ON NOTICE,
8 IF HE HADN'T BEEN BEFORE, OF HIS LEGAL OBLIGATION TO REPORT
9 INCOME FROM HIS FOREIGN BANK ACCOUNT TO THE GOVERNMENT.

10 AND FINALLY, THE EVIDENCE THAT THE COURT HEARD THIS
11 MORNING ESTABLISHES THAT BETWEEN 2005 AND 2010, THE DEFENDANT
12 RECEIVED MULTIPLE NOTICES FROM THE I.R.S. AS PART OF
13 CORRESPONDENCE AUDITS, ALL OF WHICH RELATED TO UNREPORTED
14 INTEREST INCOME. THOSE NOTICES STARTED BEFORE THE DEFENDANT
15 REACTIVATED ACCOUNT 3679. THEY CONTINUED THROUGH THE ENTIRE
16 TIME PERIOD AT ISSUE IN THIS CASE. SOME OF THEM CLOSELY
17 COINCIDE WITH THE DATES ON WHICH TAX RETURNS WERE FILED.

18 AND THESE AUDITS WERE -- EACH TIME THAT THE I.R.S. CAME TO
19 THE DEFENDANT AND SAID YOU LEFT INTEREST INCOME OFF OF YOUR TAX
20 RETURN, THIS WAS ANOTHER REMINDER TO THE DEFENDANT TO REPORT
21 ALL OF HIS INCOME AND EACH TIME IT WAS ANOTHER OPPORTUNITY TO
22 COME CLEAN AND TO REPORT HIS INCOME TO THE GOVERNMENT, BUT HE
23 DID NOT.

24 AND THAT'S PART OF THE EVIDENCE THAT THERE WAS CONCEALMENT
25 IN THIS CASE BECAUSE EACH AUDIT WAS AN OPPORTUNITY FOR THE

1 DEFENDANT TO COME CLEAN AND SAY THAT IN ADDITION TO THE
2 INTEREST INCOME, I.R.S., THAT YOU FIGURED OUT ON YOUR OWN FOR
3 THESE 1099'S, I HAVE MORE I NEED TO REPORT, AND HE NEVER DID
4 SO.

5 AND THERE'S ADDITIONAL EVIDENCE OF CONCEALMENT,
6 PARTICULARLY THERE'S TWO E-MAILS IN WHICH THE DEFENDANT IS
7 ASKING THAT BANK STATEMENTS FOR ACCOUNT AND FOR HIS DAUGHTER'S
8 ACCOUNT NOT BE MAILED TO HIS HOUSE BUT BE MAILED ELSEWHERE.

9 SO THAT'S THE EVIDENCE OF WILLFULNESS AS TO COUNTS ONE
10 THROUGH THREE.

11 COUNTS FOUR AND FIVE RELATE TO TAX RETURNS FOR THE
12 CHILDREN. THE SAME WILLFULNESS AS FOR THE TAX RETURNS APPLY TO
13 THESE COUNTS AS WELL. HE MANAGED HIS CHILDREN'S ACCOUNTS. HE
14 KNEW ABOUT HIS OBLIGATIONS OF REPORTING.

15 MR. SCHAINBAUM'S ARGUMENT ABOUT THE ECONOMIC SUBSTANCE OF
16 THESE ACCOUNTS IS CONTRARY TO WHAT THE TAX RETURN INSTRUCTIONS
17 SAY ABOUT FOREIGN BANK ACCOUNT REPORTING. THE SCHEDULE B
18 INSTRUCTIONS SAY THAT A PERSON IS REQUIRED TO CHECK THE YES BOX
19 IF THEY HAVE A FINANCIAL INTEREST IN OR SIGNATURE OR OTHER
20 AUTHORITY OVER AN ACCOUNT.

21 SIGNATURE AUTHORITY WAS CERTAINLY ESTABLISHED WITH THE
22 FACTS OF THIS CASE THAT PARTICULARLY NEAL DESAI AND AMI DESAI
23 HAD SIGNATURE AUTHORITY OVER THEIR PARENTS' ACCOUNTS. AND THAT
24 ALONE, NO MATTER WHAT THE SOURCE OF THE FUNDS IN THAT ACCOUNT
25 MIGHT BE, IT WAS ENOUGH TO TRIGGER THE REQUIREMENT TO CHECK THE

1 "YES" BOX IN RESPONSE TO QUESTION 7 (A) .

2 BUT EVEN MORE THAN THAT, THE COURT CAN SEE ON EXHIBIT 136
3 THAT THE EVIDENCE IN THIS CASE IS NOT LIMITED JUST TO THAT
4 ACCOUNT IN THE NAME OF ASHVIN DESAI JOINTLY WITH NEAL AND NILA
5 DESAI JOINTLY WITH AMI. THERE WERE TWO OTHER ACCOUNT NUMBERS.

6 AND DESPITE MR. SCHAINBAUM REFERRING TO THESE AS
7 SUBACCOUNTS, THERE WAS NO TESTIMONY FROM ANY WITNESS THAT THESE
8 WERE SOMEHOW SUBACCOUNTS OF THE PARENTS' MAIN ACCOUNTS.

9 THEY APPEAR ON 136 AS FOUR SEPARATE ACCOUNT NUMBERS UNDER
10 FOUR SEPARATE NAMES, AND THAT'S HOW THEY SHOULD BE TREATED WHEN
11 VIEWING THE EVIDENCE FOR PURPOSES OF THIS RULE 29 MOTION.

12 COUNTS SIX THROUGH EIGHT, THE DEFENSE IS ARGUING THAT AS A
13 MATTER OF LAW, MR. DESAI WASN'T LEGALLY REQUIRED TO FILE AN
14 FBAR.

15 BUT WE -- I THINK WE HAVE READ THAT PARAGRAPH IN THE FBAR
16 INSTRUCTIONS SEVERAL TIMES THROUGH SEVERAL DIFFERENT WITNESSES
17 NOW, AND WHAT IS CLEAR BY LOOKING AT THE FBAR INSTRUCTIONS IN
18 EXHIBITS 9 AND 10 IS THAT THE LOCATION OF THE ACCOUNT, THE
19 COUNTRY IN WHICH THE ACCOUNT WAS MAINTAINED IS WHAT CONTROLS
20 FOR THE FBAR FILING REQUIREMENT.

21 AND DESPITE THE PRESENCE OF BANKERS HERE IN THE U.S.,
22 DESPITE THE EXISTENCE OF REPRESENTATIVE OFFICES IN NEW YORK AND
23 FREMONT, THESE WERE INDIAN BANK ACCOUNTS AND THERE WAS NO
24 TESTIMONY TO THE CONTRARY.

25 MS. KATJU AND MS. KUMAR TESTIFIED THAT THE ACCOUNTS WERE

1 IN INDIA. IT DOESN'T MATTER WHO THEY WERE EMPLOYED BY OR WHERE
2 THEY WERE SITTING PHYSICALLY WHEN THEY WERE SERVICING THESE
3 ACCOUNTS. THE MONEY WAS INDIA. THEY TESTIFIED THEY DIDN'T
4 EVEN HAVE THE FACILITIES IN THEIR OFFICES IN NEW YORK AND
5 FREMONT TO PROCESS DEPOSITS OR ACCESS ACCOUNT STATEMENTS. ALL
6 OF THAT WAS OVER IN INDIA AND THAT'S WHY THEY COULDN'T PROCESS
7 A DEPOSIT AND WHY IT HAD TO GO THROUGH THE LOCK BOX AND BE SENT
8 TO INDIA.

9 ALL OF THE ACCOUNTS IN THIS CASE WERE MAINTAINED IN A
10 FOREIGN COUNTRY. THEY'RE FOREIGN BANK ACCOUNTS,
11 NOTWITHSTANDING THE EXISTENCE OF REPRESENTATIVE OFFICE, AND FOR
12 THAT REASON THE DEFENDANT WAS LEGALLY REQUIRED TO FILE AN FBAR.

13 AND THE OTHER ELEMENTS OF THE FBAR CHARGE ARE MET AS WELL.
14 THE DEFENDANT WAS A U.S. CITIZEN; HE HAD A FINANCIAL INTEREST
15 IN A FOREIGN FINANCIAL ACCOUNT; AND THERE WAS MORE THAN \$10,000
16 IN THE ACCOUNTS, AND AGENT OERTEL'S TESTIMONY, EVEN WHEN THE
17 NUMBERS CAME DOWN WHEN HE TOOK OUT THOSE FOREIGN DEPOSITS
18 TODAY, WE WERE STILL WELL IN EXCESS OF \$10,000.

19 AND FINALLY, FOR THE ELEMENT OF WILLFULNESS FOR THE MENTAL
20 STATE ON THE FBAR CHARGES, THE DEFENDANT SELF-PREPARED HIS 2007
21 THROUGH 2009 TAX RETURNS.

22 WE KNOW THAT HE HAD TO LOOK AT THE SCHEDULE B, LOOK AT THE
23 FOREIGN BANK ACCOUNT QUESTION BECAUSE HE ANSWERED THAT
24 QUESTION, AND RIGHT BELOW THE QUESTION IS A REFERENCE TO THE
25 FBAR INSTRUCTIONS.

1 THERE'S ALSO A REFERENCE TO THE FBAR ON THE 2009 SCHEDULE
2 B INSTRUCTIONS WHICH WAS INCLUDED WITH HIS RETURN.

3 SO THOSE TWO PIECES OF EVIDENCE, TAKEN TOGETHER, ESTABLISH
4 THAT THE DEFENDANT WAS AWARE OF THE FBAR FILING REQUIREMENT AND
5 THAT HE WAS WILLFUL WITH RESPECT TO THOSE CHARGES.

6 THE COURT: THANK YOU. MR. SCHAINBAUM, DO YOU HAVE
7 A BRIEF REBUTTAL?

8 MR. SCHAINBAUM: YES. FIRST OF ALL, WITH REGARD TO
9 COUNTS SIX, SEVEN, AND EIGHT, WHAT THE I.R.S. INSTRUCTION HAS
10 ADDED I.R.S. LANGUAGE DOES NOT APPEAR IN THE STATUTE.

11 31 C.F.R. 1010.100, SUBPARAGRAPH PARENTHESIS U, FOREIGN
12 BANK: "A BANK ORGANIZED UNDER FOREIGN LAW, OR AN AGENCY,
13 BRANCH, OR OFFICE LOCATED OUTSIDE OF THE UNITED STATES OF A
14 BANK. THE TERM DOES NOT INCLUDE AN AGENT, AGENCY, BRANCH, OR
15 OFFICE WITHIN THE UNITED STATES OF A BANK ORGANIZED UNDER
16 FOREIGN LAW."

17 THERE'S NO REFERENCE TO WHERE THE ACCOUNT IS LOCATED. THE
18 REFERENCE IS TO THE INSTITUTION BECAUSE WHAT HSBC SHOULD HAVE
19 DONE, LIKE CITIBANK DID AND BANK OF AMERICA, ISSUED 1099'S
20 BECAUSE WHEN THEY WERE HERE IN THE U.S. AS A REPRESENTATIVE
21 BANK, THEY WERE UNDER FEDERAL LAW AND THE FEDERAL LAW REQUIRED
22 ANYBODY OVER \$10 TO GET A NOTICE, AN INFORMATION PIECE.

23 SO THE I.R.S., IF YOU LOOK AT THE HISTORY, SORT OF EVOLVED
24 THE DEFINITION IN ITS -- OR THE FINCEN EVOLVED THE DEFINITION.
25 BUT THAT'S -- ACTUALLY IT'S THE I.R.S. ON THE SCHEDULE B. THEY

1 ADDED THE LANGUAGE THAT THERE'S NO SUPPORT FOR.

2 AS TO THE INFORMATION ON COUNTS FOUR AND FIVE, THEY
3 BELONG -- ALL OF THOSE ACCOUNTS BELONG TO MR. AND MRS. DESAI.
4 ANY WAY YOU LOOK AT IT, THEY BELONG TO MR. AND MRS. DESAI. AS
5 TO COUNTS ONE, TWO, AND THREE, THEY'RE CLEARLY MR. AND
6 MRS. DESAI.

7 BUT WHAT IS IT? IT'S WILLFULNESS. AND THE GOVERNMENT
8 SAYS THAT THEY DETERMINE WILLFULNESS BEYOND A REASONABLE DOUBT.

9 WELL, AARTI KUMAR SAID THAT MR. DESAI WAS A NICE PERSON, A
10 NICE MAN.

11 VANDANA KATJU FINALLY STATED, WHEN I ASKED HER, DID YOU
12 MAKE THE STATEMENT THAT HE WAS A SCATTERBRAIN? SHE ANSWERED
13 THAT, IN EFFECT, THAT -- AND WHAT WAS THE WORD THAT SHE USED?
14 HE, IN EFFECT, WAS A SCATTERBRAIN. HE DIDN'T HAVE ANYTHING --
15 BECAUSE I SAID TO HER, IS HE A SOPHISTICATED INVESTOR? AND SHE
16 SAID HE WAS NOT.

17 BUT SHE ANSWERED -- WHAT WAS THAT WORD?

18 MR. ALLEN: ABSENTMINDED.

19 MR. SCHAINBAUM: ABSENTMINDED. THANK YOU.

20 SHE SAID HE WAS ABSENTMINDED.

21 AND I SAID, WHAT DOES THAT MEAN?

22 AND SHE SAID SCATTERBRAIN.

23 SO THERE'S A DIRECT OBSERVATION OF HIS MENTAL STATE FROM
24 SOMEBODY WHO WAS DOING BUSINESS WITH MR. DESAI.

25 AND SO IT HAS TO COME DOWN TO WILLFULNESS AND I DON'T

1 THINK THE GOVERNMENT HAS SHOWN BEYOND A REASONABLE DOUBT,
2 TAKING THE CRITERIA MOST FAVORABLE TO THEM, THAT A REASONABLE
3 JURY COULD FIND THAT MR. DESAI WAS WILLFUL.

4 MIGHT FIND THAT HE WAS CARELESS, MIGHT FIND HE WAS
5 NEGLIGENT, MIGHT FIND THAT HE WAS ABSENTMINDED, AND MIGHT FIND
6 THAT HE WAS, LIKE I SAY, GOOFY, BUT NOT WILLFUL.

7 THANK YOU.

8 THE COURT: THANK YOU VERY MUCH. THE COURT WILL
9 DEFER RULING ON RULE 29 MOTION AND TAKE IT UNDER ADVISEMENT.

10 MR. SCHAINBAUM: THANK YOU.

11 THE COURT: AND WE'LL BE IN RECESS AT THIS TIME AND
12 WE'LL SEE YOU MONDAY AT 9:00 O'CLOCK.

13 REMEMBER MONDAY IS A HALF DAY.

14 MS. SISKIND: YOUR HONOR, COULD I RAISE ONE ISSUE?

15 THE COURT: SURE.

16 MS. SISKIND: AND FIRST IF WE CAN CONFIRM WHO THE
17 NEXT WITNESS IS GOING TO BE MONDAY MORNING?

18 MR. SCHAINBAUM: LET'S SEE. MR. ALLEN IS THE KEEPER
19 OF THE WITNESS INVENTORY. RAVI GONDIPALLI. WHAT IS HIS LAST
20 NAME? GONDIPALLI. WITNESS X.

21 THE COURT: RAVI GONDIPALLI YOU'LL BE CALLING MONDAY
22 MORNING?

23 MR. SCHAINBAUM: RIGHT. WHO ELSE?

24 MR. ALLEN: IT'S ONLY THE MORNING SESSION.

25 MR. SCHAINBAUM: THEN WE HAVE TO ROUND UP THE

1 OTHERS, ASSUMING --

2 THE COURT: WELL, DO YOU HAVE AN ANTICIPATED SECOND
3 WITNESS TO CALL?

4 MR. SCHAINBAUM: WE HAVE RAVI GONDIPALLI AND WITNESS
5 X, WHICH WILL BE A WHILE. AND BASANT KEDIA, DOMINIC O'HAGAN.

6 THE COURT: OKAY.

7 MR. SCHAINBAUM: I THINK THEY SHOULD BE BACK FROM
8 THEIR TRAVELS.

9 THE COURT: OKAY. ALL RIGHT.

10 MR. SCHAINBAUM: I MIGHT EVEN -- SOUGATA BANERJEE.

11 THE COURT: OKAY.

12 MR. SCHAINBAUM: I HAVE A HOUSEKEEPING PROBLEM.

13 MS. SISKIND: I WAS ABOUT TO RAISE AN ISSUE WITH THE
14 COURT.

15 THE COURT: ABOUT THE WITNESSES?

16 MS. SISKIND: YES.

17 THE COURT: LET'S TALK ABOUT THE WITNESSES FIRST.

18 MR. SCHAINBAUM: OKAY. BUT I HAVE A HOUSEKEEPING
19 MATTER.

20 THE COURT: REGARDING THE WITNESSES?

21 MR. SCHAINBAUM: NO.

22 MS. SISKIND: SO MR. GONDIPALLI, THE GOVERNMENT IS
23 GOING TO BE OBJECTING TO HIS TESTIMONY IN ITS ENTIRETY ON THE
24 BASIS THAT IT CONSTITUTES IMPROPER IMPEACHMENT ON A COLLATERAL
25 MATTER BY INTRINSIC EVIDENCE.

1 I DON'T EXPECT TO BE HEARD ON THIS TODAY. I HAVE A CASE
2 I'M GOING TO HAND UP TO THE COURT AND THE DEFENSE AND WE CAN
3 DISCUSS IT BEFORE HE TAKES THE STAND.

4 MR. SCHAINBAUM: CAN WE HAVE THE CASE?

5 THE COURT: I THINK SHE GAVE YOU THE CASE.

6 MS. SISKIND: I DON'T THINK WE NEED TO GO INTO IT
7 NOW, BUT THIS IS, I THINK, THE LEADING NINTH CIRCUIT CASE ON
8 IMPEACHMENT BY EXTRINSIC EVIDENCE ON A COLLATERAL MATTER, WHICH
9 IS OUR OBJECTION TO THE ENTIRETY OF MR. GONDIPALLI'S TESTIMONY.

10 IN TERMS OF THE TESTIMONY OF WITNESS X, WHO I THINK WE
11 NEED TO IDENTIFY AT THIS POINT ON THE RECORD IF THAT'S OKAY
12 WITH THE COURT BECAUSE HE'S ABOUT TO BE CALLED AS A WITNESS.

13 BUT IN ANY EVENT, WITNESS X AND BASANT KEDIA THE
14 GOVERNMENT WILL BE OBJECTING TO THEIR TESTIMONY, AS WE HAVE
15 PREVIOUSLY, ON SEVERAL GROUNDS.

16 I THINK WE WILL CERTAINLY NEED PROFFERS AS TO WHAT THE
17 SUBSTANCES OF THEIR TESTIMONY WILL BE.

18 BUT GIVEN WHAT I KNOW ABOUT THESE TWO WITNESSES, THERE'S
19 GOING TO BE MULTIPLE HEARSAY OBJECTIONS, RELEVANCE OBJECTIONS,
20 AND ALSO I THINK THE DEFENSE IS GOING TO ATTEMPT TO ELICIT SOME
21 SCHEME EVIDENCE FROM THESE INDIVIDUALS WHICH THE COURT HAS
22 PREVIOUSLY RULED THERE NEEDS TO BE FOUNDATION FOR, PRIMARILY A
23 NEXUS BETWEEN AN ALLEGED SCHEME AND A DEFENDANT.

24 AND GIVEN THAT THERE'S -- I KNOW THERE'S ONLY BEEN ONE
25 DEFENSE WITNESS CALLED SO FAR, BUT GIVEN THAT THERE'S NO

1 CONNECTION YET MADE BETWEEN ANY SCHEME AND THIS DEFENDANT'S
2 STATE OF MIND, THE GOVERNMENT WILL BE MAKING A FOUNDATIONAL
3 OBJECTION TO THEIR TESTIMONY AS WELL.

4 THE COURT: OKAY.

5 MR. SCHAINBAUM: WELL, I JUST WANT TO BE CLEAR, WE
6 HAVE HAD SEVERAL WITNESSES, VANDANA KATJU AND AARTI KUMAR,
7 STATE THAT THERE WAS NO SCHEME, THERE WAS NO STRATEGY AND AT
8 THE MINIMUM THESE WITNESSES ARE GOING TO IMPEACH THAT POSITION
9 OF THOSE TWO WITNESSES.

10 THE COURT: OKAY. WE'LL HAVE A -- WE COULD HAVE A
11 HEARING AS TO FURTHER OFFERS OF PROOF AS WE GET CLOSER TO THAT.

12 LET'S TAKE UP YOUR HOUSEKEEPING ISSUE.

13 MR. SCHAINBAUM: OKAY. MR. LAFFER HAS A TRIAL
14 COMMITMENT TO BE A WITNESS IN SOUTHERN CALIFORNIA. AM I
15 CORRECT?

16 MR. LAFFER: YES.

17 MR. SCHAINBAUM: SO HE NEEDS -- I HAVE BEEN
18 JOCKEYING THE SCHEDULE AND SINCE THE COURT SAID MONDAY MORNING
19 WAS THE ONLY SESSION, THE PLAN IS FOR HIM TO GO RIGHT AFTER
20 THAT SESSION TO THE LOS ANGELES AREA, TESTIFY TO WHATEVER HE'S
21 GOING TO TESTIFY TO, AND THEN RETURN.

22 WHEN ARE YOU GOING TO RETURN?

23 MR. LAFFER: MONDAY EVENING.

24 MR. SCHAINBAUM: MONDAY EVENING.

25 SO WE MIGHT NEED A LITTLE WIGGLE ROOM MONDAY MORNING TO

1 GET HIM TO THE AIRPORT SO HE CAN GET TO SOUTHERN CALIFORNIA.

2 THE COURT: WHAT DOES THAT MEAN? YOU NEED TO BREAK
3 BEFORE NOON?

4 MR. SCHAINBAUM: PROBABLY. IS THAT -- WHAT'S
5 YOUR --

6 MR. LAFFER: I THINK I HAVE A 1:00 O'CLOCK FLIGHT.

7 MR. SCHAINBAUM: OUT OF WHERE?

8 MR. LAFFER: OUT OF HERE, SAN JOSE.

9 THE COURT: ALL RIGHT.

10 MR. SCHAINBAUM: SO IT MIGHT BE 11:30.

11 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

12 MR. SCHAINBAUM: HAVE A NICE WEEKEND, YOUR HONOR.

13 THE COURT: THANK YOU.

14 (COURT CONCLUDED AT 5:21 P.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8076

DATED: SEPTEMBER 20, 2013